

**IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE
OF THE CANADIAN INVESTOR PROTECTION FUND**

RE: [REDACTED]

Heard: March 24, 2015

APPEAL CONSIDERED BY:

BRIGITTE GEISLER

Appeal Committee Member

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (the “Appellant”) was a client of First Leaside Securities Inc. (“FLSI”), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the “First Leaside Group”). FLSI was registered with the Ontario Securities Commission and was a member of the Investment Industry Regulatory Organization of Canada (“IIROC”). It was also a member of the Canadian Investor Protection Fund (“CIPF” or the “Fund”) until its suspension by IIROC on February 24, 2012, being the same date that FLSI was declared to be insolvent and sought protection under the *Companies’ Creditors Arrangement Act*. The relevant history leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee’s decision dated October 27, 2014.¹

2. The Appellant invested a total of \$21,000 in the First Leaside Funds. The Appellant sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellant was

¹ This decision is available on the CIPF website and will be referenced throughout as the “October 27, 2014 decision”.

entitled to protection through the Fund which was established to provide coverage in the event of insolvency. CIPF Staff made a decision denying compensation to the Appellant on the basis that the Appellant's losses did not arise as a result of the insolvency of FLSI and thus were not covered under the CIPF Coverage Policy dated September 30, 2010.

3. The appeal hearing was scheduled for March 24, 2015. The Appellant advised by email at 1:09 a.m. on that date that he would not be appearing at the hearing. As no reason was provided for his non-appearance an Order was issued allowing him time to contact CIPF to arrange an alternate hearing date, failing which the appeal would be considered on the basis of the materials filed. I am satisfied that the Appellant has not contacted CIPF to arrange an alternate date for an oral hearing of his appeal and consider it appropriate to determine the appeal on the basis of those materials.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the purchase of 21,000 units of First Leaside Fund (Class B) on August 14, 2009. The total cost of the purchase of the units was \$21,000. This investment was transferred to an account in the Appellant's name at Fidelity Clearing Canada ULC ("Fidelity") following FLSI's insolvency.

(ii) The Appellants' Application for Compensation

5. The Appellant applied to CIPF on October 8, 2013 for compensation for his losses in investments made through FLSI. By letter dated May 14, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

Regarding your claim for unlawful conversion, it does not appear to us that any property held by FLSI for you was converted or otherwise misappropriated. The securities that you purchased were subject to the disclosure of an offering memorandum or other offering documentation which, among other things, disclosed the risks relevant to the purchase and the investment. These investments, like any

securities, were subject to market forces and, unfortunately, your loss appears to have been a loss caused by a change in the market value of your investments and not a loss resulting from the insolvency of FLSI or the conversion of your property. Losses caused by dealer misconduct, compliance failures or breaches of securities regulatory requirements in respect of the distribution of securities are not covered by CIPF.

In addition, with respect to the securities that you purchased, they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to accounts in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

6. The Appellant relied upon arguments similar to those raised by Representative Counsel for the investors of FLSI. These arguments were dealt with in detail in the October 27, 2014 decision, in particular, in paragraphs 27 through 49.

7. One of the main arguments focused on the interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellant argued that the funds he invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate products. The Appeal Committee is of the view that the adoption of these arguments suggests that the Appellant's claim is really one of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted". Such an interpretation would in effect create a new head of coverage.

8. The purpose of CIPF coverage is limited to custodial coverage, in other words, to ensure that the clients of an insolvent member have received their property. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. The Appellant's

investments were transferred to an account in his name Fidelity Clearing Canada ULC (“Fidelity”) following FLSI’s insolvency.

9. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellant’s position, I conclude that his submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

10. The appeal is dismissed. The decision of CIPF Staff is upheld.

Dated at Toronto, this 24th day of April, 2015

Brigitte Geisler

Brigitte Geisler