

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

RE: [REDACTED] and [REDACTED]

April 29, 2015

WRITTEN APPEAL CONSIDERED BY:

BRIGITTE GEISLER

Appeal Committee Member

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] and [REDACTED] (the “Appellants”) were clients 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

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

2. The Appellants sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellants were 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 Appellants on the basis that the Appellants' 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 Appellants requested that their appeal be considered on the basis of written materials which they provided.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellants' purchases of First Leaside Properties Fund (Classes C and B) as follows:

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- i. 50,000 units of First Leaside Properties Fund (Class C) for a value of \$50,000 purchased on June 2, 2009. Stock dividends were received on December 31, 2009 and April 15, 2011 in the amount of 2,666 and 4,940 units, respectively;
- ii. 1,515 units of First Leaside Properties Fund (Class B) purchased on November 1, 2010 for \$1,515; and
- iii. 9,854 units of First Leaside Properties Fund (Class C) purchased on November 1, 2010 for \$9,854.

██████████:

- i. 892 units of First Leaside Properties Fund (Class C) for a value of \$982 purchased on June 2, 2009. Stock dividends were received on December 31, 2009 and April 15, 2011 in the amount of 47 and 88 units, respectively; and

- ii. 32,274 units of First Leaside Properties Fund (Class C) purchased on June 2, 2009 for \$32,274. Stock dividends were received on December 31, 2009 and April 15, 2011 in the amount of 1,721 and 3,189 units, respectively.

5. All of these securities were transferred to accounts in the Appellants' names at Fidelity Clearing Canada ULC ("Fidelity") or, in the case of the investments made by [REDACTED] in November, 2010, were delivered to his possession.

(ii) The Appellants' Application for Compensation

6. On September 30, 2013, the Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By letters dated August 27, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letters read 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.

[REDACTED]: With respect to the securities that you purchased and which are described in Table 1 below², they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to an account at another IIROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities described in Table 2 below³ were not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

² See paragraph 4 (i) for details.

³ See paragraph 4 (ii) and (iii) for details.

██████████: 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 an account 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

7. The Appellants raised arguments similar to those advanced at the October 27, 2014 hearing. Those arguments related to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage.

8. One of the Appellants' main arguments focused on the interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellants argued that the funds they 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 Appellants' claims are really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted" as was discussed fully in the October 27, 2014 decision. Such an interpretation would in effect create a new head of coverage.

9. 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 documentation provided by the Appellants confirms that certificates representing their investments were transferred to accounts in the Appellants' names at Fidelity or were delivered to their possession.

10. The October 27, 2014 decision deals extensively with the Appellants' arguments. This Appeal Committee adopts the reasoning in the October 27, 2014 decision. As in the October 27,

2014 decision, while the Appeal Committee has considerable sympathy for the Appellants' position, I conclude that their submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

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

Dated at Toronto, this 30th day of April, 2015

Brigitte Geisler

Brigitte Geisler