

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

RE: [REDACTED]

Heard: May 1, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On her own behalf

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (the “Appellant”), along with her late husband, [REDACTED], 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

2. The Appellant sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellant was 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. On May 1, 2015 an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The appeal hearing took place at Neeson Arbitration Chambers in Toronto, Ontario. The Appellant was in attendance.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from various purchases of First Leaside Group products as follows:

- i. The purchase by [REDACTED] of 200,000 units of First Leaside Fund (Series B) on September 24, 2009 for a purchase price of \$200,000. The investment was transferred on July 7, 2011 into a joint account with rights of survivorship in the names of [REDACTED] and [REDACTED] and a certificate representing the investment was delivered to the Appellant; and
- ii. The purchase by the [REDACTED] and the Appellant of 300,000 units of First Leaside Wealth Management Fund for a purchase price of \$300,000 on June 10, 2011. A certificate representing this investment was also delivered to the Appellant.

5. The Appellant received distributions from the insolvency proceedings with respect to her investment in First Leaside Wealth Management Fund. This amount was subtracted from the purchase price of \$300,000, resulting in a net claim of \$480,084.65.

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

(ii) *The Appellant's Application for Compensation*

6. The Appellant applied to CIPF on September 17, 2013 for compensation for her losses in investments made through FLSI. By letter dated November 12, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claim. The relevant part of the letter reads as follows:

Regarding your claim for wrongful 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 risk 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, at the date of insolvency, the securities described in the table below² was not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

7. The Appellant expressed concerns regarding the circumstances surrounding the purchase by her late husband of the First Leaside Wealth Management Fund in June, 2011. She described the serious illness of her late husband and opined that FLSI had preyed upon a person who was feeling desperate, and in a weak and vulnerable state of mind. Referring to the facts that the First Leaside Group was under investigation by the OSC at the time, and that [REDACTED] was attempting to provide for his own palliative care and provide for his family, the Appellant submitted that the selling of this investment to him was inappropriate and should have been sanctioned by a regulatory

² See paragraph 4 for details of the securities.

authority. CIPF Staff commiserated with the Appellant, but noted that the CIPF Coverage Policy does not address these kinds of issues.

8. The Appellant had also submitted written arguments similar to those advanced at the October 27, 2014 hearing. This argument focused on the interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellant argued that the funds 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. As the First Leaside Group products were found to have little or no value upon insolvency, it was argued that this was the result of an improper diversion of the Appellant’s investment funds. 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 Appellant confirms that certificates representing her investments were delivered to her, or her late husband’s possession.

10. The October 27, 2014 decision deals extensively with the Appellant’s arguments, which reasoning is adopted by this Appeal Committee. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants’ position, I conclude that her 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 4th day of May, 2015

Brigitte Geisler

Brigitte Geisler