

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

RE: [REDACTED]

Heard by Teleconference: January 13, 2016

PANEL:

PATRICK J. LESAGE) Appeal Committee Member

APPEARANCES:

[REDACTED]) in person
[REDACTED]) in person
Nicolas Businger) Counsel for Canadian Investor Protection
) Fund Staff

DECISION AND REASONS

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 (“OSC”) 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 the day after FLSI sought protection under the *Companies’ Creditors Arrangement Act*. The CIPF was established to provide certain coverage in the event of losses arising from dealer insolvency. 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 in relation to an appeal heard on October 27, 2014, released on December 17, 2014.¹

BACKGROUND

2. The Appellants began investing in First Leaside Group ("FLG") entities through FLSI in November 2007 and periodically in 2008 and 2009 ending in July 2010. In total, they invested approximately \$203,000.

3. The Appellants filed a claim with CIPF on the basis that their losses flowed from FLSI's insolvency. By letters dated May 26, 2014, Staff of CIPF denied compensation to the Appellants on the basis that their 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.

4. At the teleconference hearing, the Appellants requested I consider their written material, their articulate and impassioned oral submissions, as well as any relevant background information that has been presented at earlier appeal hearings and the arguments raised by Representative Counsel for investors of FLSI referred to in earlier hearings.

5. [REDACTED] and [REDACTED] stated that they were advised by FLSI, specifically Anthony Persaud, among others, that "with CIPF our investments up to \$1 million were safer than with the Bank." "We trusted and believed them. We were looking for a safe investment." The Appellants also commented that "as a result of what has happened to us and so many other investors, one can only conclude that CIPF has allowed brokers to use the CIPF name and logo to deceive and mislead investors." Further, the Appellants submitted that they and other investors should have been advised that the OSC was investigating First Leaside in 2009, 2010 in and 2011. "During that period we invested approximately \$65,000 in FLG entities, which we would not have done had we known an investigation was ongoing. We do not feel that with CIPF we are protected for anything".

6. The Appellants also stated that their investment monies were not used by the entities for the purpose they intended. Their funds, they said, were in fact used to prop up other FLG entities and, as described by the Grant Thornton report to use "... monies raised from new investors to fund the

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

operating losses, rehabilitation costs and distributions of existing limited partnerships.” Further, they submit that FLSI, “by inducing us to invest, when FLSI knew of the OSC investigation and that our invested funds would likely be used to prop up failing FLG entities, amounted to, an unlawful conversion”.

7. In addition the Appellants submitted----“it cannot have been intended that existing FLSI customers, such as us, who are victims of the same misconduct which the regulators eventually acted to prevent, should alone have to bear the burden of that policy decision”. This, they say, is particularly so given CIPF’s express mandate to contribute to the security and confidence of Canadian investment dealers by maintaining adequate resources to return assets to eligible customers in cases where a Member becomes insolvent.

ANALYSIS

8. It is important to understand the nature of CIPF coverage. CIPF coverage relates only to the custodial relationship between the investor client and the IIROC regulated dealer, including unlawful conversion. It does not provide coverage for malfeasance, misfeasance or for losses that flow from the diminution of the value of investments.

9. To deal first with the Appellants’ submissions that they were misled by FLSI as to the nature of CIPF coverage. As has been noted in earlier appeals committee decisions, CIPF is not a regulator like IIROC and/or the OSC. CIPF has no regulatory or supervisory authority over dealers. CIPF coverage is a custodial coverage. It covers unlawful conversion and return of monies or securities being held by the broker. It does not provide coverage for deceit, falsehood, material misrepresentation or nondisclosure, or other fraudulent means.

10. Assuming, for the purpose of this decision, that the Appellants were misled, provided false information, lied to, or were the subject of fraudulent nondisclosure by FLSI such misconduct is not unlawful conversion and is not covered by the CIPF policy.

11. The Appellants’ submission that they were not notified by FLSI, by the OSC, nor IIROC, of the pending OSC investigation, is neither an unlawful conversion nor a failure to return custodial cash, certificates and/or securities. It cannot therefore substantiate a valid claim for CIPF custodial coverage.

12. The submission that their invested monies were not used by the FLG entities for the investment purposes the Appellants intended is clearly not a matter covered by CIPF. CIPF coverage does not extend to the FLG entities, other than FLSI. In any event, it is to be noted that the FLG entities invested in by the Appellants had in their Partnership Agreements, Offering Memorandum, and Restated Declarations of Trust language that gave those entities very broad authority as to how those funds could be used. An example is that the funds could be loaned or directed to a broad range of other FLG entities and individuals. See Volume 2 of the Appeal Record in this matter.

13. Unfortunately for the Appellants, their appeal does not meet the requirements of establishing a valid legal claim for coverage under the terms of the CIPF policy

RESULT

14. The appeal must therefore be dismissed. The decision of the CIPF Staff is upheld.

Dated at Toronto, this 29th day of February, 2016



Patrick J. LeSage