

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

**RE:** [REDACTED]

**Heard: January 26, 2016, by teleconference**

**HEARD BEFORE:**

ANNE W. LA FOREST

Appeal Committee Member

**APPEARANCES:**

Graeme Hamilton

) Counsel for Canadian Investor  
) Protection Fund Staff

[REDACTED]

) On his own behalf  
and also in attendance were [REDACTED] and  
[REDACTED]

**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 (“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 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 in relation to an appeal heard on October 27, 2014.<sup>1</sup>

2. FLSI was declared to be insolvent on February 24, 2012. 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 January 26, 2016, 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 by way of teleconference. The Appellant was in attendance and made submissions on his own behalf. Also in attendance were [REDACTED] and [REDACTED] of [REDACTED].

### **Chronology of Events Relevant to the Appellant's Claim**

#### *(i) The Appellant's Investments and Claim*

4. The Appellant claims the amount of \$541,786.00 with respect to his purchases of various First Leaside Group products purchased between November 2, 2010 and August 24, 2011. All of these purchases were made after the OSC began investigating FLSI in the fall of 2009.

5. The materials filed before me establish that the purchases made by the Appellant are fully accounted for. Certificates representing the Appellant's purchases were either delivered to his possession or the units were transferred to an account in his name at Fidelity Clearing Canada ULC ("Fidelity") in December 2012. At the hearing, the Appellant objected to counsel for CIPF Staff's

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

characterization of the certificates as being off book but the Appellant did not dispute that he had received the certificates in question. Rather, his contention is that the certificates were valueless and that his interest is in recovering from the losses he has suffered.

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

6. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated February 13, 2015, the Appellant was advised that CIPF Staff were unable to recommend payment of his claims. The relevant parts of the letter 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.

With respect to the securities that you purchased [and that were on book] 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 Deal Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities [which were held off book] 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.

**Analysis**

7. In his claim submissions, the Appellant relied upon the arguments prepared by representative counsel arguing that his loss was as a result of the insolvency of FLSI and a result of unlawful conversion. These arguments were fully raised at the October 27, 2014 hearing and were addressed in the October 27, 2014 decision.

8. During the teleconference, the Appellant made the following submissions. First, the Appellant expressed concern that the regulatory authorities including CIPF should have done something before he got involved with FLSI because by that time the OSC had begun its investigation. In effect, his argument is that the regulatory authorities had knowledge that investors did not. As submitted by the Appellant, part of his frustration in this regard is that he engaged in due diligence to assess FLSI before investing and he was unable to find anything that suggested there was a problem. Second, he argued that in making his investments, he believed that they were “bonded” by CIPF. In support of this argument, the Appellant read from the CIPF brochure as follows:

What do I need to do if my investment dealer becomes insolvent? Generally, investors don't have to file individual claims as your monthly statement is considered your claim. Any additional information you'll need will be available on our website. In most cases, your account will be moved to another investment dealer where you can access it. Alternatively, CIPF may deliver the contents or value of your account to you. *To the extent that there is an eligible loss, each claim is considered according to the coverage policy adopted.* It's important to remember that you're only covered if your losses result from the insolvency of a CIPF Member. To view the coverage policy, please visit our website.

In the Appellant's words, he felt he was covered.

9. In terms of the Appellant's first argument, it is important to point out that CIPF is not a regulator. It is the OSC and IIROC who have regulatory and disciplinary authority over members and securities dealers. IIROC had the primary responsibility for regulating FLSI and, in particular, Messrs. Wilson and Phillips. The OSC had primary responsibility for regulating the issuers in the First Leaside Group. In contrast, CIPF is a not-for profit entity that manages the Fund to provide coverage in circumstances where property is not returned to an investor. While I can certainly understand the Appellant's frustration and have sympathy for him, the Coverage Policy does not encompass his claims.

10. In terms of the Appellant's second argument, the role of the Appeal Committee is to review the Coverage Policy that was in effect at the time of the insolvency of FLSI and assess whether the Appellant is, as the CIPF pamphlet outlines, eligible for coverage for his losses. There is no question in this case that FLSI is insolvent, no dispute that FLSI was a member of IIROC, and no dispute that the Appellant was a client of FLSI. However, to be eligible under the Coverage Policy, the loss must have been caused by the insolvency of FLSI and must relate to a failure to return the Appellant's property. The protection afforded by CIPF is custodial in character and coverage is provided when an investor's property – here the securities that were purchased – is not returned to them. CIPF coverage on the return of property does not extend to include a "guarantee" of the principal of the investment. Reviewing the claims confirmation material and the evidence before me, it is clear that all of the investments made by the Appellant are accounted for either through certificates that were delivered out or in account statements in relation to the units now held by Fidelity.

### **Disposition**

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

Dated at Toronto, this 4<sup>th</sup> day of February, 2016

Anne Warner La Forest