

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

RE: [REDACTED]

Heard: June 20, 2016, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

[REDACTED]

) On his own behalf

Nicolas Businger

) Counsel for Canadian Investor
) Protection Fund Staff

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 was declared to be insolvent and the day after 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, 2014.¹

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 June 20, 2016, an Appeal Committee Member of CIPF’s Board heard an appeal to determine whether to depart from the decision of CIPF Staff. At the request of the Appellant, the hearing was held by teleconference. The Appellant was in attendance.

Chronology of Events Relevant to the Appellant’s Claim

(i) The Appellant’s Investments and Claim

4. The Appellant claims the net amount of \$167,181 with respect to his purchases of various First Leaside Group products between December 20, 2006 and December 29, 2009. The claim includes the additional sum of \$35,868.60 which appears to arise from the Appellant valuing his Wimberly Apartment Limited Partnership units at \$1.00/unit whereas he purchased the units for \$0.70/unit.

5. Certificates representing the Appellant’s purchases were delivered out to the Appellant.

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 for compensation for his losses in investments made through FLSI. By letter dated December 20, 2013, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant parts of the letter read as follows:

The CIPF Coverage Policy requires that a customer must have: (a) been an eligible customer (as defined), (b) had an account with the insolvent CIPF Member, and (c) suffered financial loss due to the Member's failure to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property, received, acquired or held by, or in the control of, the Member for the customer, including property unlawfully converted. CIPF does not cover customers' losses that result from other causes such as dealer misconduct, changing market values of securities, unsuitable investments or the default of an issuer of securities.

Analysis

7. At the hearing, the Appellant repeated his assertion that the Member dealer had committed fraud. As a result his claim should be allowed. He stated that CIPF did not protect him, that it did not do its job when his money was stolen from him.

8. Counsel for CIPF Staff explained that as the certificates representing the Appellant's investments had been delivered to him, his claim was not eligible for coverage. Counsel for CIPF Staff explained that CIPF's mandate and its coverage is custodial in nature; in other words, to ensure that the clients of an insolvent Member have received their property. The Appellant has received his property; accordingly the issue of CIPF coverage is not applicable. It is most unfortunate that the value of the property is uncertain. However, the Coverage Policy clearly states that CIPF does not cover "changing market values of securities, unsuitable investments, or the default of an issuer of securities".

9. Counsel for CIPF Staff further explained that the CIPF coverage is only applicable with respect to the insolvency of a Member dealer. It does not provide any coverage when the issuer has become insolvent, which is the case for the First Leaside Group entities. The Appellant's complaint is really that he has lost money because the issuer has become insolvent. It is unfortunate that the names of many of the issuers and FLSI are so similar and that many of the entities went insolvent at the same time as FLSI. This has caused confusion with respect to investors who, understandably, are not very familiar with the complex and fragmented regulation of securities in Ontario.

10. The Appellant further explained that he had been advised by Mr. John Wilson, a principal of FLSI, that his investments were insured by CIPF. The Appeal Committee has heard from many investors that the role of CIPF coverage may have been misrepresented to investors, or that the information provided with respect to CIPF coverage was incomplete. This conduct is certainly inappropriate and regrettable, especially if these kinds of representations contributed to a decision to make an investment in First Leaside Group products. As has been stated in previous decisions of the Appeal Committee, the Board of CIPF is acutely aware that the nature and extent of its coverage has been misrepresented and is engaging in a review of its communications to the public and the industry to promote a better understanding of CIPF coverage.

11. I have sympathy for the losses suffered by the Appellant; however, I conclude that the Appellant's submissions in this appeal are not persuasive and do not give rise to a successful claim.

Disposition

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

Dated at Toronto, this 24th day of June, 2016

Brigitte Geisler