

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

RE: [REDACTED]

Heard: July 21, 2015, in writing

PANEL:

PATRICK J. LESAGE) Appeal Committee Member

APPEARANCES:

In writing appeal

DECISION AND REASONS

1. [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 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

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

2. The Appellants claim a total of \$325,599.00 for their purchases of various First Leaside Group products and cash balances held in accounts in their names with FLSI². The purchases of various First Leaside Group products were made between November 2007 and May 2010.
3. The certificates reflecting the Appellants' interests in the securities were either transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC or delivered into the possession of the Appellants. The cash balances were transferred to accounts in the Appellants' names at Bank of Montreal.
4. In their written submissions, found in the Appeal Record Volume 1, Tab A19 at pages 62 and 63, and similar submissions found at Tab B15 at pages 130 and 31, and Tab C11 at pages 192 and 193, the Appellants state, among other things, that their investments were made with the intention and understanding that the funds would be used for "the primary purpose of funding the acquisition and/or development of the various real estate projects." They further state, "the funds were not used for our intended purposes" and thus "the funds were unlawfully converted." Further, say the Appellants, the failure of FLSI to advise of the investigations while still soliciting funds for these entities amounted to unlawful conversion.
5. Those submissions, or similar submissions, were put forward in many of the cases heard by the Appeals Committee sitting either as a panel of three directors or as a single director.
6. As we noted in our October 27, 2014 decision "... we conclude that fraud, material non-disclosure and/or misrepresentation ... are not covered by the words 'including property unlawfully converted' ... The inclusion of the phrase simply recognizes that circumstances may arise where the Customer has provided investment funds or other property to the [investment dealer] for deposit to their account, but the funds were not posted to the Customer's account; in other words, the property has been unlawfully converted".
7. The Appellants' submission regarding the application or misapplication of their funds by the entities invested in: First Leaside Properties Fund, First Leaside Properties Fund (Series B), and

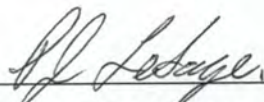
² The amounts of \$5,765 for units of 36 Bramtree Crt MPOC 6% 1FB16 were credited to the Appellants accounts on September 25, 2012. The credit balance, along with interest, was transferred to the Appellants accounts at Bank of Montreal on December 4, 2012. For the purpose of this decision, the Bramtree units will be treated as part of the cash balance claims by the Appellants. See Appeal Book, Tabs A11, 13 and Tabs B10 and 14.

First Leaside Expansion Limited Partnership; has been dealt with in other Appeal Committee decisions. Although not relevant to my conclusion, the entities in which the Appellants invested permitted a wide range of purposes to which the invested funds could be applied. CIPF does not cover losses of the entity in which the investment has been made, no matter the cause of the loss.

8. CIPF coverage is limited to custodial coverage. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines this limitation on coverage. Any misrepresentations of the coverage were not made by CIPF but by FLSI and/or the promoters of the First Leaside Group who were selling the product. CIPF has no regulatory or oversight authority over investment dealers. Oversight of brokers is primarily the jurisdiction of IIROC with additional oversight by the OSC.

9. The Appellants have suffered a loss. I sympathize with their plight; however, their loss is not covered by the CIPF policy. The appeals must therefore be dismissed. The decisions of the CIPF Staff are upheld.

Dated at Toronto, this 19th day of October, 2015



Patrick J. LeSage