

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

RE: [REDACTED]

Considered: October 22, 2015, in writing

CONSIDERED BY:

BRIGITTE GEISLER

Appeal Committee Member

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”) (collectively, 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

2. The Appellants sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellants were 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 Appellants on the basis that the Appellants' 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. The Appellants requested that their appeals be considered on the basis of written materials which they provided, including a letter from [REDACTED] dated October 16, 2015.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' purchases of various First Leaside Group products for a total claim by [REDACTED] of \$73,033.69; by [REDACTED] of \$264,712.82 and by [REDACTED] of \$20,434.86. These claims include claims for credit balances which were transferred to the Appellants.

5. The securities representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC, or were delivered into the possession of the Appellants.

(ii) The Appellants' Application for Compensation

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated February 5, 2014, the Appellants were advised that CIPF

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

Staff were unable to recommend payment of their claims. The relevant parts of the letters read as follows:

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. [REDACTED] noted that he had been solicited by John Wilson of FLSI with respect to investing in First Leaside Group products, convincing him that he would receive a reasonable return on his investments. The presentation included a 20 year history of a successful company with a solid reputation supported by a distinguished board of directors. He was also told that there would be protection from the OSC, IIROC and other investor protection organizations.

8. [REDACTED] is looking to CIPF to "take responsibility for the unscrupulous actions of their member who failed to act with honesty and integrity". In their written submissions, counsel for CIPF Staff notes that the CIPF Coverage Policy provides protection against certain kinds of losses but not others, such as losses arising from the changing market value of securities, unsuitable investments, or the default of an issuer of securities.

9. The October 27, 2014 decision from the Appeal Committee discussed the limits of the Coverage Policy, in particular, noting that there is no coverage for the protection against the misconduct of a member, so long as the customer's property was returned to the customer, as is the case here. It is most unfortunate that investors have been subjected to conduct by FLSI (and the First Leaside Group) which does not appear to be in the best interests of the investors. However, CIPF's mandate and Coverage Policy is limited to its member, FLSI and not the various entities in the First Leaside Group. Whatever conduct may have taken place within the First Leaside Group is not within CIPF's jurisdiction.

10. Further, 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. This custodial coverage is set out in CIPF's mandate, which is approved by the OSC and other provincial securities regulators. The mandate is restricted to this coverage, and does not extend to coverage for fraud, material non-disclosure and/or misrepresentation. The nature and extent of the coverage is discussed in full in the October 27, 2014 decision.

11. I have sympathy with respect to losses experienced by the Appellants and the impact that this has had upon their lives, however, I conclude that the submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

12. The appeals are dismissed. The decisions of CIPF Staff are upheld.

Dated at Toronto, this 26th day of October, 2015.

Brigitte Geisler