

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

RE: [REDACTED]

June 15, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On her own behalf

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 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 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 15, 2015, 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 was held at Neeson Arbitration Chambers in Toronto, Ontario. The Appellant was in attendance.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the purchase by the Appellant of 50,000 units of First Leaside Properties Fund (Class B) for a cost of \$50,000 on March 27, 2009. A certificate representing this investment was transferred to an account in the Appellant's name at Fidelity Clearing Canada ULC ("Fidelity").

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF on September 24, 2013 for compensation for her losses in investments made through FLSI. By letter dated October 24, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claim. The relevant part of the letter reads as follows:

Regarding your claim for wrongful conversion, it does not appear to us that any property held by FLSI for you was converted or otherwise misappropriated. In addition, as a basis for explaining your claim, you stated:

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

- “[...] I am not now and have never been an accredited investor or a financial advisor so I did what many people did and allowed [John Wilson] to use my money in investments which he fraudulently advised me be in. I believed him when he reassured me that my investments were protected by CIPF of which they were a member.
- It has since been proven that in March 2009 when I first invested, John Wilson already knew the company was under scrutiny. He lied, he cheated, and he covered up and defrauded me.[...]”

We take note of your explanations. However, 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. 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.

In addition, with respect to the securities that you purchased, they were properly recorded on the books and records of FLSI at the date of insolvency. Those securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

6. The Appellant advised that she had originally attended an investors’ meeting for First Leaside in 2007. She spoke with many investors, all of whom were satisfied with their investments. She then made an investment on March 27, 2009. At the time she noted that the investment appeared to be for accredited investors, a status for which she stated she did not qualify. She was advised that this requirement would be waived for her benefit.

7. CIPF Staff noted that the First Leaside Properties Fund (Class B) was offered by way of prospectus, thereby negating the requirement that an investor be an accredited investor. In any event, a breach of the requirement would have been a breach under the purview of the regulators, and is not part of the CIPF mandate.

8. CIPF is not a regulator. Its 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.

9. The Appellant submitted arguments similar to those advanced at the October 27, 2014 hearing. This argument focused on the interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellant argued that the funds invested were to have been invested in proprietary First Leaside products. She expressed the concern that those funds may have wrongfully been diverted to the personal benefit of the FLSI principals. As the First Leaside Group products were found to have little or no value upon insolvency, it was argued that this was the result of an improper diversion of the Appellant's investment funds. The Appeal Committee is of the view that the adoption of these arguments suggests that the Appellants' claims are really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted" as was discussed fully in the October 27, 2014 decision. Such an interpretation would in effect create a new head of coverage.

10. The October 27, 2014 decision deals extensively with the Appellant's arguments, which reasoning is adopted by this Appeal Committee. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants' position, I conclude that his submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

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

Dated at Toronto, this 23rd day of June, 2015

Brigitte Geisler

Brigitte Geisler