

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

Re [REDACTED] and [REDACTED]

May 13, 2015

PANEL:

Patrick J. LeSage

Appeal Committee Member

APPEARANCES:

[REDACTED]

Appellant, on his own behalf

[REDACTED]

Appellant, on her own behalf

James Gibson

**Counsel for the Canadian Investor
Protection Fund Staff**

DECISION AND REASONS

1. [REDACTED] and [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 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 dated October 27, 2014.¹

2. This appeal was originally scheduled to be heard on April 9, 2015 at 10 AM. At 11:30 AM the ██████ having been frustrated in their attempt to attend at the hearing location in Toronto, the appeal was adjourned on consent. Subsequently, May 13 2015 was selected for the appeal to be heard.[See endorsement dated April 14 2015]

3. Each of the Appellants invested in First Leaside Group entities through FLSI. ██████ investments, totalling \$227,447.06 net, were made during the period February 2008 and September 2011. ██████ investments, totalling \$66,893.00, were made between February 2009 and the end of December 2011. Together, the ██████ lost almost \$300,000.00. A crushing blow.

4. 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 a loss arising from insolvency. By letters dated 12 November and 3 December, 2014, CIPF Staff denied compensation to the Appellants on the basis that their 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.

5. The Appellants requested that we consider their written material, their oral comments at the hearing and any relevant background information that had come forth in earlier appeal hearings, including the arguments raised by Representative Counsel for the investors of FLSI, referred to in the October 27, 2014 decision.

6. ██████ advised that he dealt with David Phillips. This was the same David Phillips who, subsequent to the insolvency of the First Leaside Group of entities, was found by both IIROC and the OSC to have engaged in fraudulent and deceitful conduct in relation to his involvement with members of the public in raising money for those

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

entities. ██████ stated, “David Phillips never represented himself honestly”. Mr. ██████ advised that both he and ██████ believed, on the basis of representations from Phillips, that their investments were not only totally safe but, were also insured by CIPF. ██████ was also impressed when Mr. Phillips advised him that Dr. Leo DeVeber, a recognized Canadian financial administrator and executive, was an advisor to the Board of First Leaside. ██████ said, ‘I now know everything I was told by Phillips was greatly exaggerated, misleading puffery. He, Phillips, was/is a dishonest fraudster’.

7. ██████ observed that he is aware of the earlier Appeal Committee decisions [denying coverage] and the precedents they set. In light of those decisions, he realizes the difficulty he faces in this hearing. Nevertheless he accepted advice that he had been given, ‘that he should appeal’. He said he relies on the fact that Phillips led both he and his wife to believe, that even in a worse case scenario, their investments were insured by CIPF.

8. The ██████ acknowledged that the certificates representing their investments had been delivered to them.

9. Counsel for CIPF Staff, Mr. Gibson, submits that CIPF, as explained in their brochure, makes clear that coverage applies only to losses suffered as a result of the insolvency of the broker, FLSI. It does not cover economic or other losses suffered by the entity in which the investment has, at the direction of the client, been made. I agree with CIPF counsel.

10. 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 that may have been made were not made by CIPF but by FLSI and/or the promoters of the First Leaside Group who were selling the product. Oversight of brokers is primarily the jurisdiction of IIROC with additional oversight by the Ontario Securities Commission.

11. The Appellants' have suffered a tremendous loss. I sympathize with their plight; however, their loss is not covered by the CIPF coverage policy. Their appeal does not meet the requirement of establishing a valid legal claim for coverage under the terms of the CIPF program.

12. The appeals must therefore be dismissed. The decisions of the CIPF Staff are upheld.

Dated at Toronto, this 30th day of June, 2015

Patrick J. LeSage