

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

**RE:** [REDACTED] and [REDACTED]

**Heard: August 31, 2015, by teleconference**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Maureen Doherty

)  
)  
)  
)  
)

Counsel for Canadian Investor  
Protection Fund Staff

[REDACTED]

On their own behalves

**DECISION AND REASONS**

**Introduction and Overview**

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 in relation to an appeal heard on October 27, 2014.<sup>1</sup>

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. On August 31, 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 Appellants were in attendance by teleconference.

### **Chronology of Events Relevant to the Appellants' Claim**

#### *(i) The Appellants' Investments and Claim*

4. The claim arises from the Appellants' purchases of First Leaside Properties Fund (Class B and C) for a total claim by ██████ of \$28,325; by ██████ of \$33,325; and by the joint account of the Appellants of \$1,566. The claims also include claims for stock dividends.

5. The securities representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC ("Fidelity").

#### *(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 11, 2015, the Appellants were advised that CIPF

---

<sup>1</sup> 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:

Regarding your claim for unlawful conversion, it does not appear to us that any property held by FLSI for you was converted or otherwise misappropriated. 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 or the conversion of your property. 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.

### **Analysis**

7. The Appellants expressed their concern that a decision on their appeal take place prior to the resolution of class actions being brought against the OSC and IIROC, as they felt that any possible recovery from these actions would have an impact on the value of their claims. They argued that there was no loss in value of their investments until October 31, 2011 when the OSC entered into cease trade orders with the First Leaside Group.

8. Counsel for CIPF Staff submitted that any discussion with regard to the value of the securities would be secondary to whether the claim would be eligible for coverage under the CIPF Coverage Policy. Counsel for CIPF Staff explained the nature of CIPF's mandate and its coverage, which is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. The account statements for the Appellants indicated that their investments were transferred to accounts at Fidelity. There were no missing securities.

9. Counsel for CIPF Staff explained that losses which are suffered due to a change in market value are not eligible for CIPF coverage. Many FLSI customers have found it difficult to differentiate between the First Leaside entities because of the similarity of names. The Member firm was called First Leaside Securities Inc. and most of the First Leaside Group entities incorporated "First Leaside" into their names. Unfortunately, all of the entities went into

insolvency at approximately the same time, so many customers have felt that they suffered a loss because of the insolvency of FLSI. In reality, their losses arose from the insolvencies of the First Leaside Group entities who were issuers, and for whom no CIPF coverage is applicable.

10. [REDACTED] observed that the circumstances surrounding the demise of the First Leaside Group has been very frustrating, starting with the fact that the OSC conducted an investigation for an extended period of time without advising any investors. She also observed that it was a shock to see the sudden loss of value of their investments when the account statements suddenly showed N/A (not available) for value rather than the \$1.00/unit that had been consistently shown.

11. The Appellants' written submissions raised arguments similar to those advanced at the October 27, 2014 appeal hearing with respect to the timing of the investment. Those arguments related to allegations of fraud, material non-disclosure and misrepresentations by FLSI during the period within which the First Leaside Group was under investigation by the OSC. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage. The October 27, 2014 decision deals extensively with this and other arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

12. The Appellants have suffered a loss through no fault of their own. However, while I have considerable sympathy for the Appellants, I conclude that the Appellants' submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

### **Disposition**

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

Dated at Toronto, this 3<sup>rd</sup> day of September, 2015.

*Brigitte Geisler*