

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

RE: [REDACTED]

Heard: October 22, 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 (“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 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 October 22, 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 took place 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 Appellant claims the amount of \$1,142,923 with respect to her purchases of various First Leaside Group products. The Appellant has received \$83,375 from the insolvency trustee with respect to these investments.

5. Certificates representing the Appellant's purchases were either delivered to the Appellant's possession or were transferred to an account in her name at another IIROC Dealer Member. The Appellant acknowledges that she is in possession of all of her certificates.

(ii) The Appellant's Application for Compensation

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

6. The Appellant applied to CIPF for compensation for her losses in investments made through FLSI. By letter dated November 12, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claim. The relevant parts of the letter 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 Appellant explained how the loss of her investments had an extremely negative impact upon her. She felt that she had been misled and not protected by the securities regulatory system. She was of the belief that the OSC and/or IIROC had reviewed all of the offering documents for her investments, which is not the case. Review of issuer documentation is the purview of the OSC, and in the case of Offering Memoranda, which is the vehicle through which these investments were offered to the public, are not reviewed as would be the case for a prospectus.

8. The Appellant stated that she had been assured that all of her investments were safe and that if there were any issues, CIPF would provide protection. As we have heard in so many of these appeal hearings, the role of CIPF has been misrepresented to investors by FLSI. The Appellant's comments with respect to improving upon the clarity of CIPF coverage are received with great concern and are always relayed to the Board of Directors of CIPF which has constant attention to how CIPF is presented to the public.

9. The Appellant also observed that the First Leaside Group had been under investigation by the OSC for an extensive period of time during which the public was unaware that there were any

issues, and during which additional investments were made. She felt that the regulatory authorities should have taken swifter action for the protection of the public.

10. The Appellant raised arguments similar to those advanced at the October 27, 2014 hearing. This included interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellant argued that the funds she invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate projects. She submitted, in respect to the final investment (First Leaside Expansion Limited Partnership, (“FLELP”)) made on October 17, 2011, that these funds should have been available for return to her, having consideration for the cease trade order made on October 31, 2011 and the insolvency on February 24, 2012.

11. Counsel for CIPF Staff noted that FLELP’s Offering Memorandum stated that it could lend money to other entities in the First Leaside Group. When the other entities were declared insolvent, this had a negative impact upon the equity of FLELP.

12. In any event, the adoption of these arguments suggests that the Appellant’s claim is 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.

13. 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. The Appellant has received her property; accordingly the issue of CIPF coverage is not applicable.

14. The October 27, 2014 decision deals extensively with the Appellant’s arguments and the reasoning in the October 27, 2014 decision is adopted by this Appeal Committee. I have considerable sympathy for the Appellant’s situation, however, as in the October 27, 2014 decision, I conclude that the Appellant’s submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

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

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

Brigitte Geisler