

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

RE: [REDACTED]

Heard: December 8, 2014

PANEL:

PATRICK LESAGE	Appeal Committee Member
ANNE WARNER LA FOREST	Appeal Committee Member
BRIGITTE GEISLER	Appeal Committee Member

APPEARANCES:

James D. G. Douglas	)	Counsel for Canadian Investor
James Gibson	)	Protection Fund Staff
Brian Gover	)	Independent Legal Counsel for the
	)	Appeal Committee of the Canadian
	)	Investor Protection Fund
[REDACTED]	)	On behalf of the Appellant, [REDACTED]
	)	[REDACTED]

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] [REDACTED] [REDACTED], represented by [REDACTED] [REDACTED] 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 the Investment Industry Regulatory Organization of Canada (“IIROC”) on February 24, 2012, being the same date that it 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, 2014¹.

2. FLSI was declared to be insolvent on February 24th, 2012. The Appellant invested \$110,000.00 for the purchase of 110,000 units of First Leaside Wealth Management Fund (“FLWM”) on April 4, 2011; this purchase was made pursuant to a subscription agreement and Offering Memorandum. On the same date, it purchased 90,000 units of First Leaside Expansion Limited Partnership (“FLELP”) for the sum of \$90,000, also pursuant to a subscription agreement and Offering Memorandum. In 2011, FLWM paid \$5,561.11 as income to the Appellant. The Appellant also received \$7,302.30 from the insolvency Trustee, resulting in a net claim of \$187,136.59.

3. 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 CIPF Fund that 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 30th, 2010.

4. On December 8, 2014, a panel of the Appeal Committee (the “Panel”) of CIPF 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 and was open to the public. The Appellant was represented by [REDACTED] and her husband [REDACTED].

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

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

5. The Appellant's claim arises from its investments in two securities, namely: 110,000 FLWM units purchased for \$110,000, and 90,000 FLELP units, purchased for \$90,000, in April, 2011. At the date of FLSI's insolvency (February 24, 2012), the Appellant held both the FLWM and FLELP units in certificate form.

(ii) The Appellant's Application for Compensation

6. The Appellant applied to CIPF in March, 2012 for compensation for its losses in investments made through FLSI. By letter dated December 23, 2013, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

...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 investment and not a loss resulting from the insolvency of FLSI.

In addition, at the date of insolvency, the securities described.... were not held by, or in the control of FLSI. Therefore, the loss is not one that is eligible for CIPF coverage....

Analysis

7. Ms. [REDACTED] stated that she was persuaded to make the investments through FLSI on the basis of the track record of the company and the involvement of Dr. Leo De Bever on its board of directors. Mr. [REDACTED] commented that CIPF should make more efforts to inform investors of its

limited role and to perform due diligence to ensure member firms are operating reasonably well. He also expressed concern that member firms were mis-using the CIPF symbol to inflate its role with respect to protection of customers' investments. CIPF staff confirmed the nature and purpose of CIPF's mandate and coverage, which is described more fully in the October 27, 2014 Appeal Committee decision.

8. Ms. [REDACTED] commented on the timing of the Appellant's investments vis-a-vis the investigations being made at the Ontario Securities Commission. She suggested that this represented evidence that the funds being received by FLSI were received under a cloud of fraud, material non-disclosure and misrepresentation. The Appeal Committee is sympathetic to these comments and the claim of the Appellant, however, as addressed in the October 27, 2014 decision, compensation relating to allegations of wrongdoing are not within CIPF's mandate.

9. Ms. [REDACTED] indicated that she was not familiar with the general Appellant's brief prepared by representative counsel appointed as part of the CCAA application in 2012. However, she felt that the claims made in that brief were similar and applicable to the Appellant's claim. All of these arguments/positions are dealt with in the October 27, 2014 decision. As in that decision, while the Appeal Committee has sympathy for the Appellant's position, we conclude that the arguments/positions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

10. The appeal is dismissed. The decision of CIPF staff is upheld.

Dated at Toronto, this 13th day of February, 2015

Patrick LeSage

Patrick LeSage

Anne Warner La Forest

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Brigitte Geisler

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