

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

RE: [REDACTED] and [REDACTED]

Heard: July 20, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On his own behalf and on behalf of
) [REDACTED]

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, 2014.¹

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 July 20, 2015, an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The Appellant, [REDACTED] was in attendance by teleconference and made submissions on behalf of both Appellants.²

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' purchases of various First Leaside Group products between March 27, 2009 and May 18, 2011. The majority of the investments were made in 2010 and 2011, subsequent to the commencement of the OSC investigation in the fall of 2009. The total amount claimed, less \$91,884.28 distribution received from the insolvency trustee, was \$672,324.72.³

5. The securities purchased by the Appellants were either transferred to accounts in their names at Fidelity Clearing Canada ULC ("Fidelity"), or were delivered to their possession.

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

² Consequently, although this decision is in relation to the appeals brought by both Appellants, [REDACTED] is referred to below as the "Appellant".

³ By email dated July 11, 2014, [REDACTED] advised that the amount of \$30,000 relating to Merrill Lynch & Co. notes have been recovered and transferred to TD Bank and should be deducted from the total claim of \$702,324.72, thus reducing the claim to \$672,324.72. Appeal Record, Vol 1, p.157.

(ii) *The Appellants' Application for Compensation*

6. The Appellants applied to CIPF on March 13, 2012 for compensation for their losses in investments made through FLSI, with further information provided on June 2012 and December 2013. By letter dated November 12, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letter read as follows:

As a basis for explaining your claim to CIPF, you stated:

- “I am claiming for the losses in value of my original investment as First Leaside is insolvent.”
- “[...] I had just been promised that by transferring my savings from Dundee, I was making the best possible choice to protect my savings and would no longer have to be concerned about market fluctuations with mutual funds. I was further informed that when the time came, I would enjoy monthly interest payments from the F.L. investments I was about to make. It is important to note that I only received the offering memorandum while I was signing authorization.”
- “[...] I was assured these investments were very safe investments with very little risk and was also assured of this by the fact that Leo DeBever was on the Board of Directors and highly recommended the firm. I have all the advertising material and further references if required. In addition, I was assured that these investments were covered by IIROC and that First Leaside was a member of CIPF. As noted on my statements both logos feature prominently on all documents and statements.”

While you have not provided evidence of the truth of all of the assertions in support of your claim, 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.

With respect to the securities that you purchased and which [were held “on book”], they were properly recorded in the books and records of FLSI at the date of

insolvency. Those securities were transferred to accounts in your name at another IIROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities [that were held “off book”] were not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

You also indicated that your loss, or part of it, was a result of “the default of an issuer of securities”. As mentioned above, losses resulting from the default of an issuer of securities are not covered by CIPF.

Analysis

7. The Appellant advised that he was familiar with the submissions made and the decisions rendered in previous appeals from decisions of CIPF Staff and that he felt there was no value in a repetition of those arguments. The Appellant expressed his disappointment in the regulatory environment, in particular, that the OSC was conducting an investigation for an extended period of time, (which included the period when he made significant investments), and yet did not prohibit FLSI from promoting their products to the public. He stated that this was morally and ethically wrong that these events took place and that investors are without recourse. The Appellant commented that substantial funds were being paid to accountants and lawyers with respect to the First Leaside Group insolvencies, at the expense of the investors. He noted that many investors were of retirement age and that these events were a shocking blow to their financial status.

8. Counsel for CIPF staff described 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. 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. There is considerable sympathy for these and other appellants, given the situation in which they find themselves as a result of the events involving the First Leaside Group. I am sympathetic

with the Appellants' dismay and frustration with the events that evolved into the insolvency of many of the entities in the First Leaside Group. However, having regard for the CIPF's mandate, 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

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

Dated at Toronto, this 22nd day of July, 2015

Brigitte Geisler