

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

RE: [REDACTED]

Heard: September 1, 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

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 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 September 1, 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 Appellant was in attendance by teleconference.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's purchase of First Leaside Expansion Limited Partnership for a purchase cost of \$150,000 on April 7, 2011. A certificate representing the Appellant's purchase was delivered to his possession on April 8, 2011.

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated July 10, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his 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

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

security that you purchased was 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. This investment, like any security, was 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 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.

In addition, at the date of insolvency, the security [First Leaside Expansion Limited Partnership] was not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

6. The Appellant queried the nature of CIPF coverage indicating that if FLSI was in good standing with CIPF, then why was there no payment forthcoming from CIPF for losses. He also indicated that he was proceeding with the CIPF appeal process to protect his position with regard to any future events involving the insolvency of the First Leaside Group.

7. Counsel for CIPF Staff explained the limitations of CIPF insurance coverage. CIPF's mandate and its coverage does not relate to the value of a security. Rather it is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. 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.

8. Counsel for CIPF Staff noted, and the Appellant acknowledged, that the certificate representing the First Leaside Expansion Limited Partnership had been delivered to, and received by him.

9. The Appellant's 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.

10. While I have considerable sympathy for the Appellant, 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

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

Dated at Toronto, this 3rd day of September, 2015.

Brigitte Geisler