

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

RE: [REDACTED]

Heard: May 16, 2016, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

[REDACTED]

) On his own behalf

Graeme Hamilton

) Counsel for Canadian Investor
) Protection Fund Staff

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 May 16, 2016, an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. At the request of the Appellant, the hearing was held by teleconference. The Appellant was in attendance.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

4. The Appellant claims the net amount of \$681,921 with respect to his purchases of various First Leaside Group products between November 23, 2009 and June 9, 2011.

5. Certificates representing the Appellant's purchases were transferred to an account in his name at Fidelity Clearing Canada ULC or were delivered out to the Appellant.

(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 his losses in investments made through FLSI. By letter dated March 14, 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:

....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.

Analysis

7. The Appellant described that he had become involved with First Leaside through a cold call and then approaches made by a FLSI representative. He described that he was familiar with commercial property, which feature of the First Leaside Group was attractive to him. He also noted that there was positive press coverage of the First Leaside Group, including David Phillips and that there was an impressive track record.

8. As part of the presentation to encourage investment, the FLSI representative advised him that there was CIPF coverage. The Appellant noted the CIPF logo on various promotional materials which was presented to him as a guarantee of his investment. As has been stated in previous appeal hearings, the Board of CIPF is acutely aware that the nature and extent of its coverage has been misrepresented and is engaging in a review of its communications to the public and the industry to promote a better understanding of CIPF coverage.

9. 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 his property; accordingly CIPF coverage is not available. It is most unfortunate that the value of the property is uncertain; however, the Coverage Policy clearly states that CIPF does not cover

“changing market values of securities, unsuitable investments, or the default of an issuer of securities”.

10. The Appellant expressed his concern and disappointment with various aspects of his involvement with the First Leaside Group. He mentioned that his last investment with FLSI, which was in the nature of a loan of \$200,000 on June 9, 2011, was to have been repaid within 6 months and boasted a significant interest rate. He was advised that this was a special offering. In this respect, he advised that he had received an apology from his FLSI representative who told him that the employees were not to discuss the fragile financial condition of the First Leaside Group. The Appellant described this solicitation of funds to be particularly dishonest and as such should fall under CIPF coverage. Regretfully, as has been previously stated in other appeal hearing decisions, acts of dishonesty, misrepresentation or fraud are not included in the CIPF Coverage Policy.

11. The Appellant also noted the appearance of Mr. Phillips at meetings of the investors’ groups, which had been organized to try to sustain various First Leaside properties, as something which he found to be “horrible, shocking and disheartening”. He was unimpressed with Mr. Phillips’ contention that he could have saved the companies had the regulators not insisted on such strict compliance with the rules.

12. The Appellant further expressed his disappointment with the complex and expensive insolvency process, suggesting that the funds so utilized could have been better deployed in returning the monies to the investors.

13. Counsel for CIPF Staff noted the importance of the exact terms used in the Coverage Policy as a general principle and that it was appropriate that effort be expended to ensure that the wording of the Policy is properly interpreted and applied. It might be seen as an exercise in defending the Policy; however, it must be seen within the context of CIPF’s mandate, which is limited to ensuring that customers’ property lodged with Member firms is returned to those customers.

14. I have sympathy for the losses suffered by the Appellant; however, I conclude that the Appellant's submissions in this appeal are not persuasive and do not give rise to a successful claim.

Disposition

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

Dated at Toronto, this 1st day of June, 2016

Brigitte Geisler