

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

RE: [REDACTED]

Heard: June 22, 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 with its reasons released on December 17, 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. This appeal was originally scheduled for May 22, 2015, but was adjourned at the request of the Appellant to June 11, 2015. On that date, the Appellant failed to attend, resulting in the Appeal Committee issuing an Order dismissing the appeal as abandoned. Upon being notified of this Order, the Appellant requested a further hearing date which was scheduled for June 22, 2015, firstly to determine if the appeal would be re-opened and if so, proceed with the appeal on the merits. The Appellant stated that he had contacted the CIPF office to advise that he was unable to attend the re-scheduled hearing as he was stuck in traffic. There was some discrepancy with respect to whether the Appellant had mistaken the date of the appeal, however, it was verified that he did contact the CIPF office. On June 22, 2015 an Appeal Committee Member of CIPF's Board determined that the Order respecting the abandonment of the appeal would be set aside and that the appeal would proceed to determine whether to depart from the decision of CIPF Staff. The Appellant was in attendance by teleconference.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the purchase by the Appellant of 10,000 units of First Leaside Properties Fund (Class B) for a cost of \$10,000 on May 1, 2010. A certificate representing this

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

investment was transferred to an account transferred to an account in the Appellant's name at Fidelity Clearing Canada ULC ("Fidelity").

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF on August 19, 2013 for compensation for his losses in investments made through FLSI. By letter dated August 27, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

Regarding your claim for wrongful 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 risk 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.

In addition, with respect to the securities that you purchased, they were properly recorded on the books and records of FLSI at the date of insolvency. Those securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

6. The Appellant submitted arguments similar to those advanced at the October 27, 2014 hearing. This argument focused on the interpretation of the phrase "including property unlawfully converted" in the Coverage Policy. The Appellant argued that the funds he invested were misappropriated by FLSI and as such the CIPF Coverage Policy should apply. He did not provide any evidence with respect to how his funds may have been misappropriated. He acknowledged that

monthly statements received from FLSI did show his investment as an asset in his account, indicating that the funds were applied as directed by him.

7. To adopt arguments relating to misappropriation would be similar to those arguments of fraud, material non-disclosure and/or misrepresentation which were fully discussed in the October 27, 2014 decision. That decision found that the meaning of the phrase "including property unlawfully converted" does not extend to such an interpretation which would, in effect, create a new head of coverage.

8. The Appellant advised that he had been told that his investment was similar to a GIC, in other words, that it was similar to investing in a bank or other such financial institution. As stated in other Appeal Committee decisions, IIROC rules provide for strict guidelines as to the usage of the CIPF logo and CIPF has produced a brochure for Members to use to describe the limitation in its coverage. If misrepresentations as to coverage were made, those were by FLSI or the First Leaside Group, which are subject to the oversight of IIROC and the OSC, respectively. CIPF is not a regulatory body.

9. The purpose of CIPF coverage is limited to custodial coverage; in other words, to ensure that the clients of an insolvent member have received their property. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. The documentation provided by the Appellant confirms that certificates representing his investment was transferred to an account in the Appellant's name at Fidelity.

10. The October 27, 2014 decision deals extensively with the Appellant's arguments, which reasoning is adopted by this Appeal Committee. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants' position, I conclude that his 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 24th day of June, 2015

Brigitte Geisler

Brigitte Geisler