

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

RE: [REDACTED]

Heard: November 30, 2015, by teleconference

HEARD BEFORE:

ANNE W. LA FOREST

Appeal Committee Member

APPEARANCES:

Nicolas Businger

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On her 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 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. FLSI was declared to be insolvent on February 24, 2012. 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 November 30, 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 took place by way of a teleconference. The Appellant made submissions on her own behalf, although as noted below, those submissions were limited to adopting materials that had been previously filed with the Appeal Committee in relation to another appeal.

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 \$1,001 in units of First Leaside Properties Fund (Class B). These units were purchased in April of 2009 and were transferred to an account in her name at Fidelity Clearing Canada ULC (“Fidelity”).

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

5. The Appellant confirmed that she had made this investment and that the purchase was transferred to Fidelity. She has not received any distribution from Grant Thornton, the insolvency trustee.

(ii) The Appellant's Application for Compensation

6. The Appellant applied to CIPF for compensation for her losses in the investment she made through FLSI. By a letter dated April 20, 2015 to the Appellant, she was advised that CIPF Staff were unable to recommend payment of her 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 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 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 in the books and records of FLSI at the date of insolvency. Those securities were transferred to accounts in your name at another IIROC Deal Member subsequent to February 24, 2012. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

7. The investment at issue is one of the Appellant's first investments. She stated that for that reason, she simply wanted to go through with the appeal process to better understand what had happened. The Appellant did not make any oral submissions during the teleconference. She had, however, sent an email dated November 22, 2015 in which she indicated that she intended to rely on the materials that had been previously filed before the Appeal Committee that resulted in the

October 27, 2014 decision. The Appellant also suggested that the CIPF decision in her case be stayed until there was “a resolution of [the] potential action against [the] OSC and/or IIROC”.

8. Given this, counsel for CIPF Staff proceeded by asking the Appellant some basic questions about her investment, outlined the history and purpose of the Coverage Policy, and how, in their view, it applied to the Appellant’s specific situation. In terms of any possible action against the OSC or IIROC, counsel for CIPF Staff explained that this appeal process is an internal process that does not have any impact on other processes relating to FLSI.

9. The arguments raised in the materials relied upon by the Appellant have been addressed in the October 27, 2014 decision and many other decisions that have followed and I rely on those decisions here. Furthermore, I agree with the comments of counsel for CIPF Staff relating to this appeal process.

Conclusion

10. This Appeal Committee adopts the reasoning in the October 27, 2014 decision. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellant’s position, I conclude that her 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 22nd day of December, 2015

Anne Warner La Forest