

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

**RE:** [REDACTED]

**Heard: December 10, 2014**

**PANEL:**

PATRICK LESAGE	Appeal Committee Member
ANNE WARNER LA FOREST	Appeal Committee Member
BRIGITTE GEISLER	Appeal Committee Member

**APPEARANCES:**

James D. G. Douglas	)	Counsel for Canadian Investor
James Gibson	)	Protection Fund Staff
Carlo Di Carlo	)	Independent Legal Counsel for the
	)	Appeal Committee of the Canadian
	)	Investor Protection Fund
[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 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 the Investment Industry Regulatory Organization of Canada (“IIROC”) on February 24, 2012, being the same date that it 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 dated October 27, 2014<sup>1</sup>.

2. FLSI was declared to be insolvent on February 24<sup>th</sup>, 2012. Of the \$75,000 Canadian funds and \$52,000 U.S. dollar funds the Appellant invested, he has not received any recovery from the insolvency Trustee. 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 CIPF Fund that was established to provide coverage in the event of insolvency. The Appellant sought recovery for \$82,500 Canadian funds and \$54,304 U.S. dollar funds, these figures having been supplied to him by First Leaside Wealth Management Inc., (“FLWM”), a related company of FLSI, with no justification provided. 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<sup>th</sup>, 2010.

3. On December 10, 2014, a panel of the Appeal Committee (the “Panel”) of CIPF heard an appeal to determine whether to depart from the decision of CIPF Staff. The appeal hearing took place at Neeson Arbitration Chambers in Toronto, Ontario and was open to the public. The Appellant, accompanied by his partner were in attendance.

### **Chronology of Events Relevant to the Appellant’s Claim**

#### *(i) The Appellant’s Investments and Claim*

4. The Appellant is now [REDACTED] years of age and working part-time as a [REDACTED]. The claim arises from his investments in two securities, namely: 50,000 First Leaside Fund units (“FLF

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<sup>1</sup> This decision is available on the CIPF website and will be referenced through as the October 27, 2014 decision.

Units”), purchased for \$52,000 U.S. dollars in 1998 and December, 2006 (\$27,000 and \$25,000 respectively); and 75 First Leaside Acquisitions Limited Partnership units (“FLA Units”), purchased for \$75,000 in 1999. At the date of FLSI’s insolvency (February 24, 2012), the Appellant held the FLF and FLA Units in certificate form.

5. The Appellant’s investment in FLF units in 1998 was made directly through First Leaside Partners. His investment in FLA units in 1999 was made through a cheque payable directly to First Leaside Acquisitions Partnership. At the time of these two investments FLSI was not a member of a self-regulatory organization, having joined the Investment Dealers’ Association (the predecessor of IIROC) on March 1, 2004. His third investment of \$25,000 in 2006 was made through FLSI with a cheque payable directly to First Leaside Fund. Statements issued by FLSI for the Appellant show that no units are held in his account as of September 30, 2012 and December 31, 2012. On the other hand, statements issued on the same dates by FLWM (not a member of CIPF), shows the holdings which are the subject matter of this claim. The Appellant agreed that the certificate representing his 2006 investment in FLF was delivered to him. As FLSI was not a member of IIROC at the time of the first two investments, no statements were available detailing the Appellant’s investments or whether the securities were delivered to him, however, staff of CIPF accepted that these other purchases were made as claimed and certificates were subsequently delivered out.

6. The statement issued by FLWM states that it is not an official statement of positions held through Penson Financial Canada Inc., the carrying broker for FLSI. It notes that positions not held through Penson are ineligible for protection by CIPF and directs the customer to consult their Penson statement to determine what items are covered by CIPF.

*(ii) The Appellant’s Application for Compensation*

7. The Appellant applied to CIPF in October, 2013 for compensation for his losses in investments made through FLSI. By letter dated July 23, 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 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, at the date of insolvency, the securities described.... were not held by, or in the control of FLSI. Therefore, the loss is not one that is eligible for CIPF coverage....

### **Analysis**

8. The Appeal Committee noted that two of the three investments made by the Appellant were made prior to FLSI becoming a member of IIROC and accordingly, CIPF coverage would not even arise as the certificates representing these investments were delivered to the Appellant. The third investment was made in 2006, before any issues with respect to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI were being reviewed by the regulators. As described in the October 27, 2014 decision, the regulators' inquiries of FLSI began in the fall of 2009, several years subsequent to the final investment by the Appellant. The Appellant acknowledged that he had no information that the funds he invested with FLSI were not invested as he directed. He also acknowledges the receipt of regular payouts from his investments which continued until November, 2011.

9. The Appellant noted that the statements from FLSI indicated that it was a member of CIPF. He acknowledged that he failed to note that the statements from FLWM (which identified his investments), did not have any reference to CIPF coverage. Nevertheless he argued that the

attachment of the CIPF symbol on FLSI statements was misleading in that it provided assurances to the public of insurance coverage, but failed to detail the limitations of that coverage.

10. As part of his claim, the Appellant adopted general arguments which were prepared for FLSI customers by representative counsel appointed as part of the CCAA application in 2012. All of these arguments/positions are dealt with in the October 27, 2014 decision. As in that decision, we conclude that the arguments/positions 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 13th day of February, 2015

Patrick LeSage

Patrick LeSage

Anne Warner La Forest

Anne Warner La Forest

Brigitte Geisler

Brigitte Geisler