

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

RE: [REDACTED], [REDACTED] and [REDACTED]

Heard: March 25, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

)
)

Counsel for Canadian Investor
Protection Fund Staff

[REDACTED]

)
)

On behalf of themselves and
[REDACTED]

DECISION AND REASONS

Introduction and Overview

1. [REDACTED], [REDACTED] and [REDACTED] (the “Appellants”) were clients 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 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 dated October 27, 2014.¹

2. The Appellants invested a total of \$300,841 in the First Leaside Funds and Partnerships. The Appellants also claimed the sum of \$3,803 representing stock dividends received, for a total claim of \$304,644. The Appellants sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such the Appellants were 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 Appellants on the basis that the Appellants' 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 March 25, 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 at Neeson Arbitration Chambers in Toronto, Ontario and was open to the public. The Appellants [REDACTED] and [REDACTED] were in attendance and made submissions on behalf of themselves and [REDACTED].

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from
- a. the Appellant [REDACTED]'s purchase of
 - i. 5,000 units of First Leaside Properties Fund (Class B) on June 2, 2009 and a further 5,431 units on June 1, 2010,
 - ii. 25,000 units of First Leaside Properties Fund (Class C) on June 2, 2009, (stock dividends of 1,333 and 2,470 were received on December 31, 2009 and April 15, 2011, respectively); and

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

- iii. 150,000 First Leaside Expansion Limited Partnership units on April 13, 2010.
- b. the Appellant [REDACTED]'s purchase of
 - i. 5,000 units of First Leaside Properties Fund (Class B) on June 2, 2009 and a further purchase of 5,410 units on June 1, 2010; and
 - ii. 150,000 units of First Leaside Fund Series B on September 4, 2008 from which 50,000 units were sold on April 20, 2010 for a net purchase of 100,000 units;
- c. The Appellant [REDACTED]'s purchase of 5,000 units of First Leaside Properties Fund (Class B) on March 27, 2009.

5. The total cost of the purchase of the First Leaside Funds and Partnerships was \$300,841. The Appellants also claimed the sum of \$3,803 representing stock dividends received, for a total claim of \$304,644. These investments were transferred to accounts in the Appellants' names at Fidelity Clearing Canada ULC ("Fidelity") following FLSI's insolvency, with the exception of the First Leaside Expansion Limited Partnership, the certificate for which was delivered to the Appellant [REDACTED].

(ii) The Appellants' Application for Compensation

6. The Appellant [REDACTED] applied to CIPF on May 10, 2013 for compensation for his losses in investments made through FLSI. The Appellants [REDACTED] and [REDACTED] applied to CIPF on February 10, 2014. By letters dated February 10, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claim. The relevant parts of the letters reads as follows:

[REDACTED]: CIPF does not cover customers' losses that result from other causes such as dealer misconduct, changing market values of securities, unsuitable investments or the default of an issuer of securities.

With respect to the securities that you purchased and which are described in the Table 1 below², 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 Dealer Member subsequent to February 24, 2012. In addition, at the date of insolvency, the security described in Table 2³ below was not held by, or in the control of, FLSI. As an indication of this, you provided a copy to CIPF of the security that you held in certificate form. Since the security was not held by, or in the control of, the insolvent Member at the date of insolvency, the loss is not one that is eligible for CIPF coverage.

██████████ and ██████████: CIPF does not cover customers' losses that result from other causes such as dealer misconduct, changing market values of securities, unsuitable investments or the default of an issuer of securities.

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 Dealer Member subsequent to February 24, 2012.

Analysis

7. The Appellant ██████████ made submissions with respect to the assurances that were provided by FLSI regarding CIPF coverage. He noted that brochures produced by FLSI displayed both the CIPF logo and the IIROC logo, indicating that FLSI was a Member of both organizations. His FLSI representative gave assurances that there was CIPF coverage for his investments, which gave him more confidence in investing with FLSI. He was also impressed by the members of the board of FLSI which included prominent Canadian businessmen.

8. ██████████ opined that there was an obligation on CIPF to ensure that its logo and explanations regarding its coverage not create unwarranted expectations. In response, it must be noted that CIPF is not a regulatory body. It provides strict guidelines as to the usage of its logo and has produced a brochure for Members to use to describe the limitation in its coverage. If

² See paragraph 4 (a) (i) and (ii) for details of the securities.

³ See paragraph 4 (a) (iii) for details of the security.

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.

9. [REDACTED] also commented on the role of the OSC with respect to the oversight of the First Leaside Group. It was his view that the OSC was precipitous in its actions which resulted in the First Leaside Group seeking insolvency protection. He was also concerned with respect to the role of the insolvency Trustee, suggesting that investors would have preferred a resolution which may have resulted in a suspension of payments on their investments while restructuring of the companies was sought, rather than dissolving the companies. He offered examples of other large companies which had experienced difficulties, but given time, were able to successfully turn around their businesses.

10. CIPF Staff pointed out the nature of CIPF's coverage, which is custodial in nature. The Appellants acknowledged that they had either received the return of their certificates or had them transferred to accounts in their names. This custodial coverage is set out in CIPF's mandate, which is approved by the OSC and other provincial securities regulators. 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.

11. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants' position, I conclude that their submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

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

Dated at Toronto, this 26th day of March, 2015

Brigitte Geisler

Brigitte Geisler