

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

RE: [REDACTED] and [REDACTED]

Heard: August 19, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Nicolas Businger

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)

Counsel for Canadian Investor
Protection Fund Staff

[REDACTED]

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)

On her own behalf and on behalf of

[REDACTED]

DECISION AND REASONS

Introduction and Overview

1. [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 (“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, 2014.¹

2. 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 August 19, 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 was held by teleconference with [REDACTED] representing both Appellants.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellants' Investments and Claim

4. The claim arises from the Appellants' purchases of various First Leaside Group products for a total claim of \$302,857, which includes an amount of \$12,857.10 relating to the purchase price of Wimberly Apartments Limited Partnership.²

5. Certificates representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC ("Fidelity") or were delivered into the possession of the Appellants.

(ii) The Appellants' Application for Compensation

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

² The monthly statement shows the purchase of Wimberly Apartments LP units at \$.70/unit, whereas the Appellants have claimed a purchase price of \$1.00/unit. See Appeal Record, Vol 1. Tab 5.

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By letter dated June 6, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts 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.

Analysis

7. [REDACTED] commented on how the loss of their investments has had a detrimental impact on their retirement and their plans to assist their children. She advised that the Appellants had sought out safe investments and were reassured by the fact that the First Leaside Group had been successfully in business for many years.

8. [REDACTED] advised that not only were the First Leaside Group products advertised as being covered by CIPF insurance, but this was repeated in assurances from their advisor. She also commented that they were reassured in that FLSI's board of directors included at least one prominent Canadian businessman. She now believes that the activity engaged by the First Leaside Group involved criminal activity and that any regulatory actions to date have been akin to a slap on the fingers. She explained that the investment and regulatory environment governing securities was extremely complex, beyond the understanding of the normal investor. The Appeal Committee took note of the comments.

9. Counsel for CIPF Staff explained that the similarity of names of the CIPF member – FLSI – and the affiliated entities – the First Leaside Group – has caused confusion for many investors, especially since FLSI and many entities of the First Leaside Group went into insolvency at approximately the same time. He noted that CIPF coverage is restricted to the insolvency of the member and any resulting loss arising therefrom. It does not extend to coverage for the insolvency of an issuer – such as the entities in the First Leaside Group.

10. CIPF's mandate and its coverage does not relate to the value of a security. Rather it is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. 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. The Appellants' written submissions raised arguments similar to those advanced at the October 27, 2014 appeal hearing with respect to the timing of the investment. Those arguments related to allegations of fraud, material non-disclosure and misrepresentations by FLSI during the period within which the First Leaside Group was under investigation by the OSC. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage. The October 27, 2014 decision deals extensively with this and other arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

12. 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

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

Dated at Toronto, this 2nd day of September, 2015.

Brigitte Geisler