

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

RE: [REDACTED]

Heard: July 20, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) 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 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 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 July 20, 2015, an Appeal Committee Member of CIPF's Board heard an appeal 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 Appellant's purchase of units of First Leaside Properties Fund (Class C) and a further claim for stock dividends, being a total claim for \$1,168.

5. A certificate representing the Appellant's purchase were transferred to an account in the name of the Appellant at Fidelity Clearing Canada ULC ("Fidelity").

(ii) The Appellant's Application for Compensation

6. The Appellant applied to CIPF on September 27, 2013 for compensation for her losses in investments made through FLSI. By letter dated February 11, 2015, the Appellant was advised that

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

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.

Analysis

7. The Appellant noted that she had made her investment in First Leaside Properties Fund (Class C) at a time when she was a university student. She stated that she made the investment because of CIPF coverage which she understood was similar to CDIC insurance coverage. It is noted that she made her investment on April 9, 2009 which was prior to the commencement of the OSC investigation of the First Leaside Group in the fall of 2009.

8. In her written appeal, the Appellant provided arguments similar to those addressed in the October 27, 2014 decision. The adoption of these arguments suggests that the Appellant's claim is really of fraud, material non-disclosure and/or misrepresentation which does not fall within the meaning of the phrase "including property unlawfully converted", as was discussed fully in the October 27, 2014 decision. Such an interpretation would in effect create a new head of coverage.

9. Counsel for CIPF Staff explained that CIPF's mandate and its coverage 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.

10. I have considerable sympathy for the Appellant, especially as this was her first investment, however, 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 July, 2015.

Brigitte Geisler