

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

RE: [REDACTED] and [REDACTED]

Heard: August 17, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Nicolas Businger

)

Counsel for Canadian Investor
Protection Fund Staff

)

[REDACTED]

)

On their own behalves

)

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 17, 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 at Neeson Arbitration Chambers in Toronto, Ontario. The Appellants were in attendance by teleconference. The Appellants had not received the CIPF appeal materials; however, after the contents of those materials were explained to them, the Appellants stated that they wished to proceed with the appeal.

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 net claim by [REDACTED] of \$307,615, and a total net claim of \$568,507 by [REDACTED]. Their claims were reduced by a total of \$30,000 on account of receipts arising from the insolvency proceedings.

5. Certificates representing the Appellants' purchases were transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC, with the exception of a certificate for

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

170,000 units of First Leaside Investors Limited Partnership which was delivered to the possession of [REDACTED].

(ii) *The Appellants' Application for Compensation*

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

...losses caused by dealer misconduct, compliance failures or breach of securities regulatory requirements in respect of the distribution of securities are not covered by CIPF. 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.

Analysis

7. The Appellants stated that at the time of purchasing their initial investments, a principal of FLSI encouraged their investment by presenting CIPF as complete insurance protection for their investment. They were told that they were placing their money in an institution that was “safer than the banks [because] ... the money you place with us is 100% protected through CIPF.”

8. The Appellants were disappointed that, although IIROC rules provide for the required use of the CIPF logo for certain documents, CIPF does not have the regulatory mandate to enforce the proper observance of those requirements. As stated in other Appeal Committee decisions, IIROC rules provide for strict guidelines as to the usage of the CIPF logo and CIPF has produced a

brochure for Members to use to describe the limitation in its coverage. If 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. CIPF is not a regulatory body. The Appeal Committee noted the Appellants' comments with respect to the improper representation of CIPF coverage and advised that this issue was a serious consideration for the CIPF Board.

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 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. The purpose of CIPF coverage is limited to custodial coverage; in other words, to ensure that the clients of an insolvent member have received their property. It does not provide coverage for a change in market value. Its mandate is restricted to ensuring that the property of the investor which was, or should have been, on the books and records of the member at the time of the insolvency is returned to the investor. If the property is not available to the investor, CIPF will take steps to ensure the property is replaced or value given for same, determined at the discretion of the Board of CIPF.

11. CIPF is not a regulatory body; it does not have the power to monitor or enforce conduct of member firms, or provide insurance in the event of fraud or misrepresentation. The entities in the First Leaside Group were regulated by either the OSC or IIROC. IIROC's regulatory function relates to the business and operations of FLSI; it does not have jurisdiction over the various proprietary products that were marketed by FLSI to various investors. Those products, or issuers, were under the jurisdiction of the OSC, which, having concerns over those operations, began an investigation into the First Leaside Group in the fall of 2009. The jurisdiction of IIROC, and by extension, CIPF, within the limits of its mandate, is confined to FLSI only.

12. I have considerable sympathy for the Appellants, however, having regard to the CIPF mandate and Coverage Policy, 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 21st day of August, 2015.

Brigitte Geisler