

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

RE: [REDACTED] AND [REDACTED]

Written Appeal Reviewed: 16 April 2015

PANEL:

ANNE WARNER LA FOREST

Appeal Committee Member

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 1200 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 it was suspended by IIROC on February 24, 2012, the same date 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 following investments were made by the Appellants:

- i [REDACTED] acquired 25,033 units in the First Leaside Properties fund between March 2009 and May 2010. This Appellant also claims the purchase of 25,400 units in the First Leaside Realty II Limited Partnership. Staff were unable to identify any transactions relating to these units. The total claim for this Appellant is \$50,433;
- ii [REDACTED] purchased 32,004 units in the First Leaside Properties Fund between March 2009 and May 2010 and claims \$32,004.

3. 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.

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

4. On April 16, 2015, an Appeal Committee Member of CIPF's Board reviewed the Appellants' appeals. The main issue in each appeal was whether to depart from the decision of CIPF Staff that denied compensation for losses suffered by the Appellants. The appeals were heard in writing.

Chronology of Events Relevant to the Appellants' Claims

(i) [REDACTED] Claim

5. [REDACTED] investments are listed, in summary, as follows:

- i. 14,535 units in the First Leaside Properties Fund (Class B) purchased March 27, 2009 and held in a retirement account;
- ii. 5,023 units in the First Leaside Properties Fund (Class B) purchased March 27, 2009 and held in a TFSA account; and
- iii. 5,475 units in First Leaside Properties Fund (Class B) purchased May 10, 2010 held in a TFSA account;

6. The total cost of these units was \$25,033. These investments were held "on book" and were transferred to Fidelity in December of 2012. The offering memorandum relevant to the investments in the First Leaside Properties Fund expressly provided the Fund with the power to deal with promissory notes issued by First Leaside entities or otherwise with First Leaside securities. As noted above, there is an additional claim in relation to 25,400 units in First Leaside Realty II Limited Partnership for which there is no documentation. As there are more than 10,000 units at issue, CIPF Staff reserved the right to request further documentation in the event this Appellant is successful in this appeal.

7. The investments made by [REDACTED] in March of 2009 predate the commencement of the OSC investigation in the fall of 2009. The investment that was made in May of 2010 was made after the investigation but before any request for third party valuations of FLSI.

(ii) [REDACTED] *Claim*

8. [REDACTED] investments are listed, in summary, as follows:

- i. 5,023 units in the First Leaside Properties Fund (Class B) purchased March 27, 2009 and held in a TFSA account;
- ii. 7,673 units in the First Leaside Properties Fund (Class B) purchased March 27, 2009 and held in a spousal retirement account;
- iii. 13,858 units in the First Leaside Properties Fund (Class B) purchased March 27, 2009 and held in a retirement account;
- iv. 5,158 units in the First Leaside Properties Fund (Class B) purchased May 7, 2010 and held in a TFSA account; and
- v. 292 units in the First Leaside Properties Fund (Class B) purchased May 14, 2010 held in a TFSA account.

9. This represented a total purchase amount of \$32,004. The Appellant's investment in these units were held "on book" and were transferred to Fidelity in December of 2012. The offering memorandum relevant to investments in the First Leaside Properties Fund expressly provided the Fund with the power to deal with promissory notes issued by First Leaside entities or otherwise with First Leaside securities.

10. The investments made by [REDACTED] in March of 2009 predate the commencement of the OSC investigation in the fall of 2009. The investments made in May of 2010 were made after the investigation but before any request for third party valuations of FLSI.

The Appellants' Application for Compensation

11. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI prior to the October 12, 2013 deadline for submitting claims that was set by the CIPF Board of Directors. The Appellants also provided additional information regarding the claim. On their Claim Forms dated September 1, 2012, it was indicated that the amount claimed was due to unsuitable investments and the default of the issuer of the security.

12. By letters dated August 27, 2014, the Appellants were advised that CIPF Staff was unable to recommend payment of their claims. The relevant parts of the letters are identical and read as follows:

With respect to the securities [in First Leaside Properties Fund, Class B)], 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 IROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities in [First Leaside Realty II Limited Partnership] were not held by or in the control of, FLSI. Therefore, the loss is not one eligible for CIPF coverage...

In addition, you indicated that your loss, or part of it, was a result of "the default of an issuer of securities" and "unsuitable investments". As mentioned above, losses resulting from the default of an issuer of securities or unsuitable investments are not covered by CIPF.

13. On October 10, 2014, the Appellants instituted an appeal in relation to CIPF Staff's decision.

Analysis

14. The submissions outlined by CIPF Staff summarize the matters that were addressed in the October 27, 2014 decision and in this regard, we rely upon our analysis in that decision at paragraphs 27 through 49.

15. In the claims documentation, the Appellants indicate that their losses resulted from the default of the issuer of securities and unsuitable investments.

16. The difficulty here is that the Coverage Policy expressly excludes losses as a result of unsuitable investments and arising as a result of the default of the issuer. There is thus no basis for a claim in this case.

Disposition

17. The appeal is dismissed. The decision of the CIPF Staff is upheld.

Dated at Toronto, this 30th day of April, 2015.

Anne Warner La Forest