

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

**RE:** [REDACTED]

**Heard: May 8, 2015**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Nick Businger

)  
)

Counsel for Canadian Investor  
Protection Fund Staff

[REDACTED]

)

On his 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 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.<sup>1</sup>

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 May 8, 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. The Appellant was in attendance.

### **Chronology of Events Relevant to the Appellants' Claim**

#### *(i) The Appellant's Investments and Claim*

4. The claim arises from the purchase by the Appellant of 43,516 units of Wimberly Fund (Class B, Series 8%) units for a purchase price of \$43,516 on July 19, 2010. The Appellant also claimed an additional cash amount of \$1,573.08, for a total claim of \$45,089.08. This balance had been reduced by \$658.02 as a result of interest receipts, payments to and fees incurred by the Appellant, which reduced the cash balance to \$915.06 at the time of the transfer of the account. The securities and cash in the name of the Appellant were transferred to an account in his name at Fidelity Clearing Canada ULC ("Fidelity").

#### *(ii) The Appellant's Application for Compensation*

5. The Appellant applied to CIPF on October 10, 2013 for compensation for his losses in investments made through FLSI. By letter dated December 12, 2014, the Appellant was advised

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

that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

Regarding your claim for wrongful 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 risk 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.

With respect to the cash held in your account, and the securities purchased which are described in Table 1 below,<sup>2</sup> they were properly recorded in the books and records of FLSI at the date of insolvency. Those cash and securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the cash described in Table 2<sup>3</sup> below was not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

## Analysis

6. The Appellant noted that CIPF is promoted as a fund for the protection of investors. He requested an explanation as to why CIPF had not provided insurance coverage for the catastrophic failure of FLSI, which had resulted in harm to investors. CIPF Staff explained that, unlike IIROC and the OSC, CIPF has no regulatory function, such as powers to monitor the conduct of dealers or to pursue enforcement actions in the event of misconduct. He noted as well that CIPF coverage does not apply when an issuer becomes insolvent, but only when a Member of IIROC becomes insolvent. As such there is no CIPF protection for any reduction in the market value of shares.

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<sup>2</sup> See paragraph 4 for a description of the security.

<sup>3</sup> See paragraph 4 for details on the cash claim.

7. 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. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage. The documentation provided by the Appellant confirms that certificates and cash representing his investments were transferred to an account at Fidelity.

8. The Appellant had also submitted written arguments similar to those advanced at the October 27, 2014 hearing. This argument focused on the interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellant argued that the funds invested were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate products. As the First Leaside Group products were found to have little or no value upon insolvency, it was argued that this was the result of an improper diversion of the Appellant’s investment funds. The Appeal Committee is of the view that the adoption of these arguments suggests that the Appellants’ claims are 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. The October 27, 2014 decision deals extensively with the Appellant’s written arguments, which reasoning is adopted by this Appeal Committee. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants’ position, I conclude that his submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

10. CIPF Staff noted that Wimberly Fund, in which the Appellant was invested was not part of the insolvency proceedings involving most of the First Leaside Group. The Appellant indicated that he is engaged in on-going communication with the administrators of this fund.

**Disposition**

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

Dated at Toronto, this 19th day of May, 2015

Brigitte Geisler

Brigitte Geisler