

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

**RE:** [REDACTED] and [REDACTED]

**Heard: November 26, 2015, by teleconference**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Nicolas Businger

)

Counsel for Canadian Investor

)

Protection Fund Staff

[REDACTED]

)

On his own behalf

)

On her own behalf

**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 the day after FLSI 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.<sup>1</sup>

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 November 26, 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. The Appellants were in attendance.

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

#### *(i) The Appellants’ Investments and Claim*

4. The claim arises from the Appellants’ investments in First Leaside Properties Fund and in other non-First Leaside entities. ██████████ claimed a net amount of \$38,234.13 which included 8,234.13 units of 36 Bramtree CRT MPOC 6% 1FB16. ██████████ claimed a net amount of \$52,000 which included \$27,000 in non-First Leaside Group investments. ██████████ and ██████████ also claimed a net amount of \$14,686 with respect to a joint account in the name of ██████████ ██████████ or ██████████.

5. Certificates representing the Appellants’ purchases were transferred to accounts in the Appellants’ names at Fidelity Clearing Canada ULC.

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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”.

(ii) *The Appellants' Application for Compensation*

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By a letter to both Appellants dated May 27, 2014 regarding the joint account and separate letters to them dated December 10, 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:

*Joint account:* 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.

██████████ and ██████████: 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 breaches 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. At the hearing, it was determined that the claims were limited to the Appellants' investment in the First Leaside Properties Fund. The non-First Leaside investments had been transferred to

accounts at another dealer or were used to resolve promissory notes which had been given by [REDACTED] and [REDACTED] to First Leaside Wealth Management Inc. when a withdrawal of monies was requested from their accounts.

8. The Appellants advised that they had received no distributions from the insolvency trustee. Counsel for CIPF Staff advised that the First Leaside Properties Fund was a trust which had not participated in the insolvency proceedings but was being managed by an investor Board of Trustees who had legal counsel advising them. The contact information was provided to the Appellants.

9. [REDACTED] described their difficult on-going financial circumstances in caring for a disabled child. They had hoped that their investments, which promised a 9% return by Mr. Wilson, would help them with their demanding medical bills. They had also hoped that CIPF would provide them with compensation for their losses. They had a series of questions with respect to the claims process and CIPF's role.

10. Counsel for CIPF Staff advised that CIPF is a not-for-profit organization which is financed by investment dealers who are members of IIROC and consequently, members of CIPF. He explained that CIPF is not a regulatory body, unlike the OSC and IIROC, as it has no powers to discipline its members.

11. CIPF coverage applies to FLSI. It does not extend to any of the other First Leaside Group entities. Unfortunately, there has been considerable confusion for many investors as a result of the similarity of the names of the First Leaside Group entities and the fact that most of them became insolvent at approximately the same time.

12. The CIPF Coverage Policy provides that claims must arise from the insolvency of a member firm. The Coverage Policy also clearly excludes "losses that result from changing market values of securities, unsuitable investments, or the default of an issuer of securities".<sup>2</sup> The Appellants' claims

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<sup>2</sup> See Appeal Record Volume 1, Tab A-9, page 34

are for the diminishment of the value of their investment in First Leaside Properties Fund, which has not become insolvent. That is not a claim arising from the insolvency of a member firm.

13. 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. The Appellants have received their property; accordingly CIPF coverage does not apply. It is most unfortunate that the property has lost almost all of its value; however, that value has not yet been determined as the fund continues to exist and is being administered by a Board of Trustees led by one of the investors in First Leaside.

14. [REDACTED] queried why this appeal was not being heard in a courtroom before a judge. He was advised that the CIPF claim process provides for an internal evaluation of claims, which can then be appealed to the CIPF Board of Directors. Because of the large number of claims involving FLSI, the Board has delegated certain members of the Board to conduct the appeal hearings.

15. [REDACTED] also queried what further steps could be taken with respect to his claim. He was advised that the decision of the Appeal Committee is a final step within the CIPF process. There is no provision for appeal to a court. He was also advised of various on-going litigation with respect to FLSI against various parties, which might provide some recovery for some First Leaside investors. He asked other questions for which there was no answer available; for example, he asked why the OSC took such a long time in their investigation and did not advise investors earlier of their findings.

16. I have considerable sympathy for the losses suffered by the Appellants; however, I conclude that the Appellants' submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

**Disposition**

17. The appeals are dismissed. The decisions of CIPF Staff are upheld.

Dated at Toronto, this 12<sup>th</sup> day of December, 2015.

*Brigitte Geisler*