

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

RE: [REDACTED]

Heard: October 1, 2015, in writing

WRITTEN APPEAL CONSIDERED BY:

BRIGITTE GEISLER

Appeal Committee Member

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 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, 2014.¹

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

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. The Appellant requested that his appeal be considered on the basis of written materials which he provided.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's purchases of First Leaside Premier Limited Partnership on December 30, 2009 and First Leaside Ultimate Limited Partnership on December 23, 2010 for a total claim amount of \$46,451.40. These securities were delivered into the possession of the Appellant.

(ii) The Appellants' Application for Compensation

5. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated August 1, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his 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.

In addition, at the date of insolvency, the securities described in the table² below were 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 raised arguments similar to those advanced at the October 27, 2014 hearing. This included interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellant argued that the funds he 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 projects. He submitted that all of his investments were made after 2008, during the period in which the OSC was investigating the First Leaside Group, and were unlawfully converted by FLSI for their own use.

7. In any event, 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.

8. 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 Appellant has received his property; accordingly the issue of CIPF coverage is not applicable.

9. The October 27, 2014 decision deals extensively with the Appellant’s arguments and the reasoning in the October 27, 2014 decision is adopted by this Appeal Committee. As in the October 27, 2014 decision, I conclude that the Appellant’s submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

² See Paragraph 4 for details of the securities.

Disposition

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

Dated at Toronto, this 13th day of October, 2015

Brigitte Geisler