

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

RE: [REDACTED]

Heard: July 21, 2015, by teleconference

PANEL:

PATRICK J. LESAGE) Appeal Committee Member

APPEARANCES:

[REDACTED]) Appellant, on his own behalf

[REDACTED]) Appellant, on his own behalf and as executor of

) [REDACTED]

Nicholas Businger) Counsel for the Canadian Investor
) Protection Fund Staff

DECISION AND REASONS

1. [REDACTED] whose Estates are represented by [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, 2014.¹

2. The Appellants' claims to CIPF are \$16,225 for [REDACTED]; \$15,962 for [REDACTED]; \$15,951 for [REDACTED]; and \$10,940 for [REDACTED]. They invested these amounts from October 2009 to January 2011.

3. [REDACTED], as executor of the Estates of his parents, [REDACTED], and on his own behalf, submitted that dividends payable to each of them, including [REDACTED] were to be in cash and that none of the Appellants directed FLSI to reinvest those dividend stock units. Their position therefore is that the cash dividend amount should have been in their FLSI accounts at the date of the FLSI insolvency. As a result they should have a valid claim to at least those amounts.

4. The client statements for that period indicate there were 957 stock dividend units placed in [REDACTED]'s account; 897 stock dividend units in [REDACTED]' account; 884 stock dividend units for [REDACTED]; and 940 stock dividend units for [REDACTED]. It could reasonably be assumed from all the evidence that the value of the stock dividend units would be \$1.00 each. In other words, at a minimum, the family claims a total of \$3,678 that they submit should have been in their FLSI accounts at the time of insolvency.

5. They make this submission on the basis that they gave FLSI no authorization to invest those monies and therefore FLSI unlawfully converted those sums and, therefore, the Appellants claim is a valid one for CIPF.

6. I would agree with their logic if the dividend had in fact been a cash dividend. The records however clearly indicate that it was not a cash dividend. Rather it was in each case recorded in the FLSI statements of the Appellants as "Stk. Div. from First Leaside".

7. A review of the documentation relating to these investments does not preclude a payment to investors by way of stock dividend. In fact, the First Leaside Fund Trust declaration specifically contemplates stock dividends, rather than cash.

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

8. Further the evidence does not satisfy me that either of the funds (First Leaside Fund or Wimberly Fund) was prohibited from using stock dividends, even if after the “initial proposed closing date”, which was “extendable”.

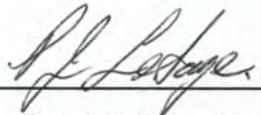
9. Even if I am wrong on that point, it would not make the results different, because it was the entity in which the funds were invested, First Leaside Fund or Wimberley Fund, that would have improperly issued the stock dividend, not FLSI, the insured investment dealer.

10. I nevertheless believe I should record some of the views expressed by both [REDACTED] and [REDACTED] who said in part the following: “The OSC should not have shut this down. That is what caused the losses.” “We were told that the interest, a cash dividend, would go directly to our TFSA accounts.” And by [REDACTED], “it seems that CIPF doesn’t cover much of anything”.

11. CIPF coverage is limited to custodial coverage. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines this limitation on coverage. Any misrepresentations of the coverage that may have been made were not made by CIPF but by FLSI and/or the promoters of the First Leaside Group who were selling the product. Oversight of investment dealers is primarily the jurisdiction of IIROC with additional oversight by the OSC. CIPF has no oversight over investment dealers.

12. The Appellants have suffered a loss. I sympathize with their plight; however, their loss is not covered by the CIPF coverage policy. Their appeal does not meet the requirement of establishing a valid legal claim for coverage under the terms of the CIPF policy. The appeals must therefore be dismissed. The decisions of the CIPF Staff are upheld.

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



Patrick J. LeSage