

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

RE: [REDACTED]

Heard: June 15, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) 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 in relation to an appeal heard on October 27, 2014.¹

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 June 15, 2015 an Appeal Committee Member of CIPF’s Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The Appellant was in attendance by teleconference.

Chronology of Events Relevant to the Appellant’s Claim

(i) The Appellant’s Investments and Claim

4. The claim arises from the purchase by the Appellant of various First Leaside Group products and other securities as follows:

- i. 12,162 units of Wimberly Apartments Limited Partnership for a value of \$7,783.68, purchased at an unknown date and purchase cost.
- ii. 100 shares of Research in Motion, purchased on August 22, 2007 for \$7,345.00² (the Appellant has claimed a value of \$2,016);
- iii. 61,396 units of First Leaside Properties Fund (Class B) purchased for a cost of \$61,396 on May 1, 2009. A further 15,422 units were acquired on June 16, 2009 for a cost of \$15,422;

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

² The Appellant purchased 339 shares of RIM. On October 22, 2007, he sold 239 shares. See Appeal Record Vol 1, Tab 1 and 2.

- iv. 7,000 Government of Canada bonds purchased for a cost of \$9,619.26 on April 20, 2007 (the Appellant has claimed a value of \$12,471.20);
- v. 8,000 Government of Canada bonds purchased for a cost of \$14,062 on April 20, 2007 (the Appellant has claimed a value of \$16,192);
- vi. 8,000 Government of Canada bonds purchased for a cost of \$14,197.20 on April 20, 2007 (the Appellant has claimed a value of \$17,053.60);
- vii. 6,000 Government of Canada bonds purchased for a cost of \$10,458.96 on April 20, 2007 (the Appellant has claimed a value of \$12,972);³
- viii. 50,000 Merrill Lynch & Co Inc. NT LKD index 15 due 6/29/2015 purchased for a cost of \$50,725 on April 30, 2007 (the Appellant has claimed the sum of \$50,300);
- ix. 19,587 Cemetery RD MPOC 6% 10JAN16 purchased on August 9, 2011 for a cost of \$19,587; and
- x. Cash balances of \$1,580.54.

5. Documentation for the Wimberly Apartments investment is not available. The 100 shares of RIM were sold in June, 2012 as shown on the FLSI statement. The First Leaside Properties Fund (Class B) units were delivered to the Appellant or transferred to an account in the Appellant's name at Fidelity Clearing Canada ULC ("Fidelity"). The Government of Canada Bonds, the Merrill Lynch investment, and the cash balances were transferred to Nesbit Burns Inc. in June 2012. The Cemetery RD MPOC investment was transferred to Fidelity. The Appellant acknowledged all of the foregoing.

(ii) The Appellant's Application for Compensation

6. The Appellant applied to CIPF on October 11, 2013 for compensation for his losses in investments made through FLSI. By letter dated October 24, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

³ The higher claim values of the bonds is taken from a schedule attached to the Appellant's claim to be found at page 75 of Appeal Record, Vol 1 and the October, 2011 FLSI statement at Tab 9 of the Appeal Record, Vol 1.

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 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.

With respect to the cash held in your accounts, and the securities purchased which are described in Table 1 below⁴, they were properly recorded in the books and records of FLSI at the date of insolvency. Those cash and securities were transferred to accounts in your name at another IIROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities described in Table 2 below⁵ 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

7. The Appellant expressed concern that the value in his investments from the date of the insolvency of FLSI has decreased by more than half. He expressed concern and confusion with respect to his investments, advising that he had relied upon his Investment Advisor who has since retired and was unwilling to assist him with respect to his claim. He did agree that all of the securities and cash referred to in his claim have been accounted for through sales (RIM shares), transfers to accounts at other brokers in his name, or delivery of certificates into his possession.

8. CIPF Staff explained the mandate of CIPF which is to ensure that any securities held by a broker for the benefit of a client at the time of insolvency are transferred to accounts in the name of the client. The mandate does not include any coverage or compensation for any loss in the value of

⁴ See paragraph 4 (ii), 58,814 units noted in (iii); (iv) to (vii); (viii) and (ix) and paragraph 5 for details of the securities.

⁵ See paragraph 4 (i) and 18,004 units noted in (iii) and paragraph 5.

the securities, should this have occurred. 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 these limitations on coverage.

9. In his claim to CIPF, the Appellant submitted 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 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.

10. The Appeal Committee notes that these submissions are only partially applicable to the Appellant having regard to the dates of the purchases and the nature of many of the investments which were made on his behalf, as more than half of his claim relates to non- First Leaside Group products.

11. The October 27, 2014 decision deals extensively with the Appellant’s arguments, which reasoning is adopted by this Appeal Committee. As in the October 27, 2014 decision, while the Appeal Committee has sympathy for the Appellant’s 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.

Disposition

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

Dated at Toronto, this 23rd day of June, 2015

Brigitte Geisler

Brigitte Geisler