

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

RE: [REDACTED]

Heard: March 25, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On behalf of himself, by teleconference
) On behalf of the Appellant, by teleconference

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, 2014.¹

2. The Appellant invested a total of \$543,721.94 in the First Leaside Funds and Partnerships. 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 March 25, 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 and was open to the public. The Appellant was in attendance by teleconference and made submissions. Further submissions were also made by [REDACTED], [REDACTED]'s sister and also an investor with FLSI.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's purchase of various First Leaside Funds and Partnerships, as follows:
 - a. Purchases for a total of \$202,804 in units of First Leaside Fund on 11 dates between November 3, 2006 and April 17, 2009;
 - b. Purchases for a total of \$175,000 of units of First Leaside Expansion Limited Partnership on 4 dates between February 21, 2006 and May 28, 2008;
 - c. The purchase of 50,000 units of First Leaside Progressive Limited Partnership on December 31, 2009 for a cost of \$50,000; and

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

- d. The purchase of 175,000 units of Development Notes Limited Partnership on April 1, 2010 for a cost of \$175,000

5. The total cost of the purchase of the units and partnerships was \$602,804. The Appellant received distributions from two of his investments, the First Leaside Expansion Limited Partnership and the First Leaside Progressive limited Partnership for a total of \$60,025.43, which reduced the claim amount. In addition, he claimed a further 943.37 units of First Leaside Expansion Limited Partnership, which claim was not documented in the statements or documents supplied by the Appellant. However, this amount was added to the total claim amount, resulting in a net claim of \$543,721.94.

6. Certificates representing these investments were delivered to the Appellant with the exception of 138,363 units of First Leaside Fund which were transferred to accounts in the Appellant's name at Fidelity Clearing Canada ULC ("Fidelity") following FLSI's insolvency.

(ii) The Appellants' Application for Compensation

7. The Appellant applied to CIPF on September 23, 2013 for compensation for his losses in investments made through FLSI. By letter dated October 10, 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:

As a basis for explaining your claim to CIPF, you stated:

- "...My investment advisor, John Wilson, sold me products that were not in line with my stated investment objectives and therefore, I would like First Leaside to compensate me on my principle [sic] investments..."
- "...Wilson also mentioned that First Leaside was regulated by IIROC and CIPF, so there was a comfort I [sic] knowing the industry was insuring [sic] that they were complying to acceptable investment standards..."
- "...I called First Leaside's legal department and ask them explain the risks in the layperson's language. After a detailed explanation of all their conditions,

I had faith that my investments carried minimal risks and the legal jargon is there for the protection of the entire group of partners....”

We take note of your explanations. However, 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 or the conversion of your property.

With respect to the securities that you purchased and which are described in the Table 1 below², they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to accounts in your name at another IROC Dealer Member subsequent to February 24, 2012. In addition, at the date of insolvency, the securities described in Table 2³ below were not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage.

Analysis

8. [REDACTED] stated that he had advised the FLSI representative that he was interested in low risk investments. He indicated that he was interested in investments which were represented by the hard assets of real estate and that his investment funds be invested for the primary purpose of funding the acquisition and/or development of various real estate products. He was unaware that the offering documents allowed transfers of funds by way of loans between the various entities of the First Leaside Group, as he believed that each limited partnership was an independent operating entity. Both [REDACTED] and [REDACTED] expressed concern that these transfers of money were made solely for the purpose of enriching the principals of FLSI.

² See paragraphs 3 and 4 for details of the securities.

³ See paragraphs 3 and 4 for details of the securities.

9. [REDACTED]'s argument was essentially that the investments made for him were not suitable for his investment profile. Whether or not that was the case, it is quite clear that the CIPF Coverage Policy excludes claims which are based upon suitability as it is not within the purview of CIPF to conduct investigations regarding issues of suitability or other elements of possible misconduct. The October 27, 2014 decision discusses the limitations of CIPF coverage, which is also outlined in the CIPF brochure.

10. [REDACTED] and [REDACTED] both emphasized that it was their impression that CIPF, along with IROC, regulated FLSI and the First Leaside Group of companies. Further, the assurances provided by the FLSI representative that they would be protected by the Fund gave them more confidence in investing. CIPF Staff clarified that the First Leaside Group of companies was under the regulatory jurisdiction of the OSC, while FLSI, the securities dealer, was regulated by IROC.

11. They expressed their disappointment with the regulatory process, especially as the investigation of the First Leaside Group appears to have been conducted over a number of years. CIPF Staff acknowledged that the regulation of securities dealers is a complex structure in Canada, however, CIPF is not a regulator, but a provider of custodial coverage which ensures the return of the investor's property. It does not provide insurance coverage against losses in market value which might be experienced by the investor.

12. CIPF Staff assured both [REDACTED] and [REDACTED] that the view of the regulators, and CIPF, is not that investors were foolhardy in making investments with the First Leaside Group of companies. Many investors, like themselves, had made efforts to research the reputation of the First Leaside Group and had received assurances that they had had many years of profitable returns for their investors. The resulting demise of the First Leaside Group of companies did not reflect negatively on the investors' investing acumen or suggest any negligence on their parts in making these investments.

13. As in the October 27, 2014 decision, while the Appeal Committee has considerable 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

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

Dated at Toronto, this 26th day of March, 2015

Brigitte Geisler

Brigitte Geisler