

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

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

**Heard: 17 April 2015**

**PANEL:**

ANNE WARNER LA FOREST

Appeal Committee Member

**APPEARANCES:**

[REDACTED]

)  
)

On his own behalf and on behalf of [REDACTED]  
[REDACTED]

James Gibson

)  
)

Counsel for Canadian Investor  
Protection Fund Staff

## 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 1200 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 it was suspended by IIROC on February 24, 2012, the same date 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.<sup>1</sup>

2. The following investments were made by the Appellants:

- i [REDACTED] acquired 60,000 units in the First Leaside Properties Fund on May 7, 2010 for a total claim of \$60,000; and
- ii [REDACTED] purchased units in two First Leaside products, both in March of 2009. This Appellant also claims stock dividends paid in April 2011 for a total claim of \$108,566.

3. 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.

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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”.

4. On April 17, 2015, an Appeal Committee Member of CIPF's Board heard the Appellants' appeals. The main issue in each appeal was whether to depart from the decision of CIPF Staff that denied compensation for losses suffered by the Appellants. The appeals were heard together at Neeson Arbitration Chambers in Toronto, Ontario and the hearing was open to the public. [REDACTED] [REDACTED] on behalf of himself and [REDACTED]

### **Chronology of Events Relevant to the Appellants' Claims**

*(i) [REDACTED] Claim*

5. As noted, the Appellant [REDACTED] purchased 60,000 units in First Leaside Properties Fund (Class B) in May of 2010. This investment was held off book and from the documentation before the Appeal Committee it appears that it was delivered out to [REDACTED] on May 7, 2010. This investment was made after the investigation but before any request for third party valuations of FLSI. The offering memorandum and declaration of trust in relation to the Fund provided for the power to invest in First Leaside entities.

*(ii) [REDACTED] Claim*

6. [REDACTED] [personal information]. His investments are listed, in summary, as follows:

- i. 50,000 units of First Leaside Properties Fund (Class B), purchased on March 27, 2009 (which was before the OSC began investigating FLSI); and
- ii. 50,000 units of First Leaside Properties Fund (Class C), purchased on the same date.

7. This represented a total purchase amount of \$100,000. The investments were made prior to the OSC's investigation of FLSI in the fall of 2009. Stock dividends were later paid on December 31, 2009 and April 15, 2011. This Appellant is claiming the dollar value of the 8,566 stock dividends received on April 15, 2011, for a total claim of \$108,566. The Appellant's investments in the units were held "on book" and were transferred to Fidelity in December of 2012. The offering memorandum and declaration of trust in relation to the First Leaside Properties Fund provided for the power to invest in First Leaside entities.

### **The Appellants' Application for Compensation**

8. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI prior to the October 12, 2013 deadline for submitting claims that was set by the CIPF Board of Directors.

9. By letters dated April 7, 2014, the Appellants were advised that CIPF Staff was unable to recommend payment of their claims. The relevant parts of the letters read as follows:

██████████: At the date of insolvency, [your] security [in First Leaside Properties Fund (Class B)], was not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

██████████: With respect to your securities [in the First Leaside Properties Fund (Class B) and First Leaside Properties Fund (Class C)], they were properly recorded in the books and records of FLSI at the date of insolvency. These securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012. Therefore the loss is not one that is eligible for CIPF coverage, as indicated above.

10. The Appellants requested an appeal of CIPF Staff's decision on May 22, 2014.

### **Analysis**

11. The arguments raised by the Appellants are similar to those that were addressed in the October 27, 2014 decision and in this regard, we rely upon our analysis in that decision at paragraphs 27 through 49.

12. In the written documentation that was provided to the Appeal Committee, the Appellants submitted that the denial of compensation was not just and that it is comparable to "taking out insurance and paying for many years just to find out that the insurer will not pay after a fire". At the oral hearing, ██████████ pointed out that he intended to put his investments in something equivalent to a savings account with very low risk and that it was represented to him that the investments he made were very safe because of the protection provided for by the CIPF.

13. As noted in the December 27, 2014 decision, the difficulty with this argument is that while the Coverage Policy provides protection, that protection is for losses arising from a member's failure to return property. It does not provide coverage due to bad investment advice or misrepresentation on the part of IIROC members. That, unfortunately is what is at issue in this case.

14. While the Appeal Committee has considerable sympathy for the Appellants, unfortunately, their circumstances do not give rise to a successful claim for compensation from CIPF.

### **Disposition**

15. The appeal is dismissed. The decision of the CIPF Staff is upheld.

Dated at Toronto, this 28<sup>th</sup> day of April, 2015.

Anne Warner La Forest