

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

RE: [REDACTED]

Heard: November 25, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Nicolas Businger

) 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 (“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 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 November 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 was held by teleconference. The Appellant was in attendance.

Chronology of Events Relevant to the Appellants' Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's investment on June 24, 2011 in First Leaside Global Limited Partnership; First Leaside Expansion Limited Partnership; and First Leaside Venture Limited Partnership for a total claim amount of \$350,000. This claim was reduced by receipts from the insolvency trustee in the total amount of \$20,554.19, and a return of capital from his investments of \$8,558.77, resulting in a net claim of \$320,887.04.

5. Certificates representing the Appellant's purchases were delivered to the Appellant's possession.

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

(ii) *The Appellant's Application for Compensation*

6. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated February 11, 2015, 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.

Analysis

7. The Appellant advised that the First Leaside Group marketing materials contained the logos for IIROC and CIPF, which helped convince him that his investments would be safe. He intended that his investments be used to develop a property, but now believes that his funds were fraudulently used to make payments to other investors.

8. This submission was supplemented by his written argument, in which 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, which was suggested by the Appellant and described in the paragraph above.

9. 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 Appellant expressed his disappointment in the actions of the securities regulatory system which he believes failed investors. He advised that he understood that protection was probably not geared to failed investments, but that the First Leaside Group situation was different because fraud was involved.

11. The issue of coverage for fraudulent actions was discussed in the Appeal Committee's October 27, 2014 decision, in paragraph 32, which stated that fraud was not covered:

After careful consideration, we conclude that fraud, material non-disclosure and/or misrepresentation, as alleged in this case, are not covered by the words "including property unlawfully converted" under CIPF's Coverage Policy. The Appeal Committee does not find the phrase to be ambiguous. It is clear that the intent of the Coverage Policy is to return property in the Customer's account to the Customer in the event of the insolvency of the Member. The inclusion of the phrase simply recognizes that circumstances may arise where the Customer has provided investment funds or other property to the Member for deposit to their account, but the funds were not posted to the Customer's account; in other words, the property has been "unlawfully converted".

12. In addition to the foregoing discussion regarding fraud, counsel for CIPF Staff also described the restrictions of CIPF coverage: there is no coverage for changing market values; for unsuitable recommendations; and/or for the default of an issuer of securities.

13. 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.

14. The Appellant expressed his views that the exclusions from CIPF coverage were not clearly stated by CIPF, and that CIPF could do a better job at ensuring that the narrowness of its coverage is understood by industry participants. As has been stated in other Appeal Committee decisions, these observations by Appellants are taken seriously by the CIPF Board of Directors.

15. 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. I have considerable sympathy for the Appellant's situation, however, 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.

Disposition

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

Dated at Toronto, this 9th day of December, 2015

Brigitte Geisler