

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

**RE:** [REDACTED]

**Heard: October 23, 2015, by teleconference**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Nicolas Businger

)

Counsel for Canadian Investor  
Protection Fund Staff

)

[REDACTED]

)

Sole Shareholder of, and representing the  
Appellant

**DECISION AND REASONS**

1. [REDACTED], represented by [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.<sup>1</sup>

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 October 23, 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, represented by [REDACTED], 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 Appellant's purchase of 30,000 units of First Leaside Wealth Management Fund for \$30,000 on December 30, 2010. A certificate representing the Appellant's purchase was delivered into the possession of the Appellant.

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

5. The Appellant applied to CIPF for compensation for its losses in investments made through FLSI. By letter dated July 8, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of its claim. The relevant parts of the letter read as follows:

Regarding the claim for unlawful conversion, it does not appear to us that any property held by FLSI for [REDACTED] was converted or otherwise misappropriated. The security that was purchased was 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. This investment, like

---

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

any security, was subject to market forces and, unfortunately, the loss appears to have been a loss caused by a change in the market value of the investment and not a loss resulting from the insolvency of FLSI or the conversion of the 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**

6. ██████ indicated that he had been induced to invest through a cold call from one of FLSI's representatives. He felt good about the investment, especially since he was receiving monthly distributions, which continued until October, 2011.

7. ██████ advised that he had read a number of the other Appeal Committee decisions related to FLSI. He stated that he did not understand the purpose of CIPF insurance coverage if it did not cover losses suffered by investors. Counsel for CIPF Staff explained the custodial nature of CIPF insurance coverage, which does not include coverage for losses in investment value. In response, ██████ suggested that CIPF review its materials to better clarify its restricted coverage, a suggestion which has been made by other Appellants, and which has been conveyed to the CIPF's Board of Directors.

8. CIPF's mandate is to coverage that 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. It is most unfortunate that the property has lost almost all of its value, however, the Coverage Policy clearly states that CIPF does not cover "changing market values of securities, unsuitable investments, or the default of an issuer of securities".

9. In his written submissions on behalf of 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. ██████ argued that he understood that the funds he invested on behalf of the Appellant were to have been invested in

proprietary First Leaside products for the primary purpose of funding the acquisition and/or development of various real estate projects.

10. These arguments suggest 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.

11. 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. As in the October 27, 2014 decision, while expressing considerable sympathy for the position of the Appellant, 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**

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

Dated at Toronto, this 2<sup>nd</sup> day of November, 2015.

*Brigitte Geisler*