

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

RE: [REDACTED] and [REDACTED]

Heard: February 24, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

)
)

Counsel for Canadian Investor
Protection Fund Staff

[REDACTED]

)
)

On his own behalf and for [REDACTED]
[REDACTED]

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 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 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. FLSI was declared to be insolvent on February 24, 2012. 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.

3. On February 24, 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, Mr. [REDACTED], was in attendance and made submissions on his own behalf and on behalf of [REDACTED].

Chronology of Events Relevant to the Appellants’ Claim

(i) The Appellant’s Investments and Claim

4. The claim arises from the Appellants’ investments as follows:

[REDACTED]:

- i. \$47,169 in 47,169 units of First Leaside Premier Limited Partnership, on November 12, 2009;

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

- ii. \$100,000 in 100,000 units of First Leaside Expansion Limited Partnership on June 14, 2010;

██████████:

- iii. \$150,000 in 150,000 units of Wimberly Fund (Class B Series 8%) on March 19, 2010; and
- iv. \$300,000 in 300,000 units of First Leaside Expansion Limited Partnership on March 24, 2010.

5. The Appellant, ██████████ confirmed that certificates for all of these units were delivered to the Appellants shortly after the recorded date of purchase. The Appellants have received \$3,830.05 USD from the insolvency Trustee.

(ii) The Appellants' Application for Compensation

6. The Appellants applied to CIPF on October 10, 2013 for compensation for their losses in investments made through FLSI. By letters dated September 25, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of his claim. The relevant parts of the letters 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.²

² The same statements were made in the letter to ██████████ with minor grammatical changes in wording as appropriate for the context.

In addition, at the date of insolvency, the securities described in the table below 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. In his submissions, the Appellant [REDACTED] referred to the decision of the OSC with respect to Messrs. Phillips and Wilson. In that decision, Messrs. Phillips and Wilson were found to have acted improperly in that they continued to raise money despite the concerns expressed in the Grant Thornton Report, which was completed on August 19, 2011.

8. The Appellant, [REDACTED] expressed concern about the conduct of the regulators and the insolvency receiver in putting all of the properties in Canada into receivership. It was his understanding that some of the properties would have been viable had additional funds been infused, which he described as a normal business practice.

9. CIPF Staff explained the nature of CIPF's custodial coverage regime which ensures that in the event of an insolvency, customers receive their property from the member firm. The Appellant, [REDACTED] confirmed that the Appellants have received their property. The Appellants' concerns relate to the value of their investments. The Coverage Policy does not provide recovery for investments which have suffered a market value loss.

10. In this case, the Appellant [REDACTED] also raised arguments similar to those advanced at the October 27, 2014 hearing. Those arguments related to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage. The October 27, 2014 decision deals extensively with this and other arguments which were raised. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

11. 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

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

Dated at Toronto, this 27th day of February, 2015

Brigitte Geisler

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