

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

**RE:** [REDACTED] **AND** [REDACTED]

**Heard: 17 April 2015**

**PANEL:**

ANNE WARNER LA FOREST

Appeal Committee Member

**APPEARANCES:**

[REDACTED]

)  
)

On their own behalves

James Gibson

)  
)

Counsel for Canadian Investor  
Protection Fund Staff

## DECISION AND REASONS

### Introduction and Overview

1. [REDACTED] (also referred to below as “[REDACTED]”) and [REDACTED] (also referred to below as “[REDACTED]”) (together, 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 units in a number of First Leaside products between November 2007 and September 2011, for a total purchase price of \$528,659.00. From this there are claimant deductions of \$15,000.00 for a total claim of \$513,659.00;
- ii [REDACTED] purchased units in two First Leaside Products, one in February of 2011 and the second in July of the same year, for a total purchase price of \$142,349. The claimant also had a credit balance held in an RRSP account in the amount of \$30,223.58 in her retirement account at the date of insolvency. The claimant, however claimed only \$29,706.08 of this credit balance resulting in a deduction of \$517.50, for a total claim of \$172,055.08.

---

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

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.

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. Both of the Appellants were in attendance.

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

#### *(i) [REDACTED]'s Claim*

5. [REDACTED] investments are listed, in summary, as follows:
- i. 82,474 units of First Leaside Select Limited Partnership purchased November 13, 2007;
  - ii. 180,000 units of First Leaside Fund (Series B) purchased July 10, 2008;
  - iii. 50,000 units of First Leaside Properties Fund (Class B) purchased June 16, 2009;
  - iv. 35,000 units of First Leaside Progressive Limited Partnership purchased on August 14, 2009.
  - v. 25,000 units in the Wimberly Fund (Class B Series 8%) purchased on September 1, 2010.
  - vi. 74,000 units in First Leaside Mortgage Fund (Class A) purchased on December 14, 2010 (14,000 units) and February 17, 2011 (60,000 units);
  - vii. 46,184 units in Flex Fund (Class B) purchased on September 23, 2011; and
  - viii. 36,001 units in First Leaside Expansion Limited Partnership purchased on September 23, 2011.

6. The total cost of these units was \$528,659. [REDACTED] has deducted \$15,000 representing amounts released from the First Leaside Mortgage Fund (Class A) leaving a total claim of \$513,659. A number of investments were held “off book” and were delivered out to [REDACTED] on November 15, 2007 (First Leaside Select Limited Partnership), August 17, 2009 (First Leaside Progressive Limited Partnership), September 1, 2010 (Wimberly Fund (Class B Series 8%)), and September 26, 2011 First Leaside (Expansion Limited Partnership) respectively. His investments in the First Leaside Fund (Series B), First Leaside Properties Fund, First Leaside Mortgages Fund (Class A), and the Flex Fund (Class B) were held “on book” and transferred to Fidelity in December of 2012 following FLSI's insolvency. In the case of all of these investments, documents in the form of offering memoranda, a declaration of trust, and a prospectus provided that the relevant funds had the power to invest in First Leaside entities.

7. Many of the investments made by [REDACTED] predate the commencement of the OSC investigation in the fall of 2009. The investment in the Wimberly Fund was made after the investigation but before any request for third party valuations of FLSI. The first investment in the First Leaside Mortgage Fund (Class A) was made after the request for third party valuations and the second investment in that Fund was made after the valuations had been received but before Grant Thornton was retained. The final two investments in the Flex Fund (Class B) and the First Leaside Expansion Limited Partnership were made after the receipt of the Grant Thornton Report.

8. [REDACTED] investments represented 10 years of savings and came from the sale of his company. He had hoped to use these funds to retire. As a result of his losses, [REDACTED] has been unable to retire and will not be able to do so for another 5 years.

(ii) [REDACTED] *Claim*

9. [REDACTED] investments are listed, in summary, as follows:

- i. 93,000 units of First Leaside Wealth Management Fund purchased February 18, 2011 which was after the receipt of third party valuations of FLSI but just prior to the retaining of Grant Thornton to conduct a study of FLSI's viability. This investment was held in a retirement account; and

ii. 49,349 units of First Leaside Wealth Management Fund purchased on July 21, 2011 shortly before the Grant Thornton report was submitted in August. This investment was held in a cash account.

10. This represented a total purchase amount of \$142,345.00. As noted above, there was an additional claim of a credit balance of \$29,709.08, for a total claim of \$172,055.08. The Appellant's investment in the units purchased in February of 2011 were held "on book" and were transferred to Fidelity in December of 2012. The units purchased in July of 2011 were held "off book" and were delivered out to [REDACTED] on July 21, 2011. Her credit balance was held "on book" and transferred to TD Investment Services Inc. in March of 2012. The offering memorandum relevant to the investments in the First Leaside Wealth Management Fund expressly provided the Fund with power to invest in First Leaside entities.

11. [REDACTED] investments were purchased using an inheritance she had received from her parents and from her savings. Neither of the Appellants was aware until November of 2011 that FLSI was being investigated, that requests for valuation had been made, nor that there was a report from Grant Thornton.

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

12. 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. The Appellants also provided additional information regarding the claim. On the Claim Form dated November 27, 2012, it was indicated that the amount claimed was due to the default of the issuer of the security. Correspondence dated January 10, 2014 was also attached and included in Attachment D to the claim summary of [REDACTED].

13. By letters dated February 10, 2014 and August 1 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:

[REDACTED]: We take note of your explanation [relating to FLSI's continuing to trade after the submission in August of 2011]. 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 relevant 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.

With respect to the securities [in First Leaside Fund (Series B), First Leaside Properties Fund, First Leaside Mortgages Fund (Class A), and the Flex Fund (Class B)], they were properly recorded in the books and records of FLSI at the date of insolvency. Those securities were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012.

In addition, at the date of insolvency, the securities in [First Leaside Expansion limited Partnership, Wimberly Fund (Class B), First Leaside Progressive Limited Partnership, and First Leaside Select Limited Partnership] were not held by or in the control of, FLSI. Therefore, the loss is not one eligible for CIPF coverage...

In addition, you indicated that your loss, or part of it, was a result of "the fault of an issuer of securities". As mentioned above, losses resulting from the default of an issuer of securities are not covered by CIPF.

[REDACTED]: With respect to the cash held in your account and the security in [your RRSP account in First Leaside Wealth Management Fund], they were properly recorded in the books and records of FLSI at the date of insolvency. Those cash and security were transferred to an account in your name at another IIROC Dealer Member subsequent to February 24, 2012.

At the date of insolvency, the security [in First Leaside Wealth Management Fund in your cash account], 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.

In addition, you indicated that your loss, or part of it, was a result of "the default of an issuer of securities". As mentioned above, losses resulting from the default of an issuer of securities are not covered by CIPF.

14. The Appellants requested an appeal of CIPF Staff's decision on March 2 and September 3, 2014.

## Analysis

15. Many of 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.

16. At the oral hearing, the thrust of the Appellants' argument was that the Appeal Committee should use its discretion to do something to help the 1200 people who had suffered losses because of the actions of the principals of FLSI. The principals were being investigated by the OSC between January of 2009 and the date that investors became aware of the problems with their First Leaside investments and continued to raise capital throughout this period. Thus, investments were being made "in the dark" and there was no information that would allow individuals to protect themselves. Furthermore, it had now been confirmed by the OSC that the principals had acted in breach of their responsibilities to investors. In their particular case, individuals from FLSI had told the Appellants that their investments were absolutely safe because of the protection of the CIPF. In their view, the CIPF should provide some kind of remedy for this wrongdoing.

17. For his part, counsel for CIPF Staff acknowledged that the OSC had determined that the principals of FLSI had engaged in misrepresentation. However, he restated CIPF Staff's position to the effect that the Coverage Policy simply does not cover losses related to misrepresentation or regulatory breaches.

18. The jurisdiction of the Appeal Committee is outlined in the Coverage Policy. In the October 27th decision, the Appeal Committee specifically addressed the scope of its discretion as follows:

"The Appeal Committee is not a court. It has no inherent jurisdiction to apply equitable principles, as much as it may have sympathy for the Appellant's position. The Appeal Committee is bound by the heads of compensation cited in its Coverage Policy and the exemptions from coverage set out therein. In our view the exercise of our discretion is limited to the Coverage Policy which provides, in general terms, for the return of the Appellant's property to him."

19. As in that case, the Appellants here have either received certificates representing their investments or their units are held for them in accounts in their names. As such, the Appeal Committee is unable to find in favour of the Appellants.

**Disposition**

20. 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