

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

RE: [REDACTED] and [REDACTED]

April 29, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

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)

Counsel for Canadian Investor
Protection Fund Staff

[REDACTED]
[REDACTED]

)
)

On behalf of himself
On behalf of herself

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 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, 2014.¹

2. 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 April 29, 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.

Chronology of Events Relevant to the Appellants’ Claim

(i) The Appellant’s Investments and Claim

4. The claim arises from the Appellants’ purchase of 150,000 units of First Leaside Universal Limited Partnership for \$150,000 on December 21 2010. A certificate representing this investment was delivered to the Appellants on December 21, 2010. [REDACTED] had also invested with FLSI at some earlier date and presented a First Leaside Wealth Management report which showed a value of an investment in his name for \$25,400. No other evidence was provided with respect to this investment which is not included as part of the Appellant’s claim or appeal.

(ii) The Appellants’ Application for Compensation

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

5. The Appellants applied to CIPF on August 7, 2012 for compensation for their losses in investments made through FLSI. By letter dated January 13, 2014, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant part of the letter reads as follows:

As a basis for explaining your claim, you stated:

“...Now that I am aware of who is exempt and can be a accredited investor I believe that together both my wife and myself did not qualify and should not have been allowed to invest in the First Leaside Universal Ltd. Partnership.”

While we do not have full information about your investment circumstances, as mentioned above, losses resulting from unsuitable investments or dealer misconduct are not covered by CIPF.

Analysis

6. The Appellants 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.

7. One of the main arguments focused on the interpretation of the phrase “including property unlawfully converted” in the Coverage Policy. The Appellants argued that the funds they invested were to have been invested in the First Leaside Universal Limited Partnership on the understanding that such funds would be invested for the primary purpose of funding the acquisition and/or development of various real estate products. Instead, they alleged, the monies were diverted into the hands of the principals of FLSI, used to pay earlier investors, or otherwise fraudulently deployed. The Appellants did not provide any evidence with respect to these allegations. In any event, the Appeal Committee is of the view that the adoption of these arguments suggests that the Appellants’ claims are 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.

8. The Appellants expressed considerable distress over the loss of their investment, especially since they believed that the representations of FLSI being a member of CIPF and IIROC provided them with some confidence that their investments were safe. They were persuaded by the representations of the principal of FLSI with regard to the successful track record of the First Leaside Group which had operated profitably for many years. They expressed the view that the various regulatory bodies and the government should have provided more oversight and vigilance in order to protect the investing public. The Appeal Committee is sympathetic to the difficulties of the public in navigating the complex and segmented securities regulatory regime.

9. The Appellants also raised the issue of their status as “accredited investors”. They were of the view that to purchase the investment required that they meet the test for accredited investors, which they believed they failed to do. CIPF Staff noted that an alternative for qualification for the investment in an Offering Memorandum investment was a minimum investment of \$150,000, which was the value of the Appellants’ investment. This issue is also related to the issues of misconduct and as such, is not within CIPF’s Coverage Policy.

10. The purpose of CIPF coverage is limited to custodial coverage; in other words, to ensure that the clients of an insolvent member have received their property. As was indicated in the October 27, 2014 decision, the CIPF brochure outlines limitations on coverage, which does not extend beyond the return of investors’ property. The Appellants confirmed that the certificate representing their investment was delivered to them.

11. As in the October 27, 2014 decision, while the Appeal Committee has considerable sympathy for the Appellants’ position, I conclude that their 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 30th day of April, 2015

Brigitte Geisler

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