

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

**RE:** [REDACTED]

**Written Appeal Reviewed: June 22, 2015**

**PANEL:**

ANNE WARNER LA FOREST

Appeal Committee Member

## 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 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 in relation to an appeal heard on October 27, 2014.<sup>1</sup>

2. The Appellant acquired 170,000 units in First Leaside Fund (Series B) on 27 January 2010. The total claim is for \$170,000.

3. The Appellant, through her Power of Attorney, has 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.

4. On June 22, 2015, an Appeal Committee Member of CIPF's Board reviewed the Appellant's appeal. The main issue is whether to depart from the decision of CIPF Staff that denied compensation for losses suffered by the Appellant. The appeal was heard in writing.

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

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

5. As noted above, the Appellant invested \$170,000 in the First Leaside Fund (Series B). These investments were held “off book” and were delivered out to the Appellant in certificate form on January 28, 2010. The business of the fund was to deal with securities related to real property in Canada and the United States. The offering memorandum relevant to the investments in the First Leaside Properties Fund expressly provided the Fund with the power to invest in First Leaside Entities.

6. The investment made by the Appellant in January of 2010 was made after the commencement of the OSC investigation in the fall of 2009 but before any request for third party valuations of FLSI.

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

7. The Appellant applied to CIPF for compensation for her 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 Appellant also provided additional information regarding the claim both on her claim form dated May 13, 2013 and on her claim form dated September 20, 2013.

8. By means of a letter dated May 14, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of her claims. 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. In addition, as a basis for explaining your claim, you stated:

“I have invested \$170,000.00 with FLSI (which was invested in series B trust units). I was told the investment was supposed to provide a steady income from rental properties without deteriorating the original investment. I was also told the investment was such that I was to receive my original investment back when I wished to re-invest somewhere else.”

While you have not provided evidence of the truth of all of the assertions in support of your claim, 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 security that you 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 any security, was subject to market forces and, unfortunately, your loss appears to have been a loss caused by a change in the market value of your investment and not a loss resulting from the insolvency of FLSI.

In addition, at the date of insolvency, the security [in the First Leaside Fund (Series B)] 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.

9. On August 28, 2014, the CIPF received a letter from the Appellant's Power of Attorney instituting an appeal in relation to CIPF Staff's decision.

## **Analysis**

10. The submissions outlined by CIPF Staff summarize the matters that were addressed in the October 27, 2014 decision.

11. In the claims documentation dated May 13, 2013, the Appellant indicated that she had been told that the investment was supposed to provide a steady income from rental properties without deteriorating the original investment. The Appellant was also told that the investment was such that “I was to receive my original investment back when I wished to re-invest somewhere else.”

12. The difficulty is that even if it could be demonstrated that these statements are true, the Appeal Committee has already concluded that the Coverage Policy does not provide protection for misrepresentations made by a member. The fact that the Appellant’s investments may have been made as a result of inducement through misrepresentation may constitute misconduct by the member but it does not constitute unlawful conversion.

13. The additional information dated September 20, 2013 simply restates the claims outlined to us by representative counsel during the hearing that led to the October 27, 2014 decision. In this regard, we rely upon our analysis in that decision at paragraphs 27 through 49.

## **Disposition**

14. The appeal is dismissed. The decision of the CIPF Staff is upheld.

Dated at Toronto, this 24<sup>th</sup> day of June 2015.

Anne Warner La Forest