

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

RE: [REDACTED]

Heard: May 22, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On his own behalf

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 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 October 27, 2014 with its reasons released on December 17, 2014.¹

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 May 22, 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. The Appellant was in attendance by teleconference.

Chronology of Events Relevant to the Appellants’ Claim

(i) The Appellant’s Investments and Claim

4. The claim arises from the purchase by the Appellant of 50,632 units of First Leaside Global Limited Partnership (“Global”) for a cost of \$50,632 on March 30, 2011. A certificate representing this investment was delivered to the Appellant. The Appellant has received payment of \$9,983.48 from the insolvency trustee.²

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

² Appeal Book, vol.1, Tab 7, p.32

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

5. The Appellant applied to CIPF on September 30, 2013 for compensation for his 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 his claim. The relevant part of the letter reads as follows:

As the basis for explaining your claim to CIPF, you stated: "I am a customer of FLSI who is/was a CIPF member and who has become insolvent." We take note of your explanation. 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 security that you purchased was subject to the disclosure of an offering memorandum or other offering documentation which, among other things, disclosed the risk 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 described in the table below³ 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.

Analysis

6. The Appellant described the circumstances surrounding his purchase of Global, explaining that he had intended to make an investment in the Wimberly funds, however, as he was told they were not presently available, he invested in Global on what he thought was a temporary basis. He did acknowledge that he had requested the purchase of Global, and the delivery of the certificate representing that purchase, in writing. He submitted that this was a misrepresentation on the part of the principals of FLSI; however, he acknowledged that CIPF does not have a mandate to deal in claims of misrepresentation.

³ See paragraph 4 for details of the security.

7. The Appellant noted the prominent display of both the CIPF and IIROC symbols on promotional material utilized by FLSI. He indicated that this provided him with some modicum of security with respect to his investment. CIPF provides strict guidelines as to the usage of its logo and has produced a brochure for Members to use to describe the limitation in its coverage. If misrepresentations as to coverage were made, those were by FLSI or the First Leaside Group, which are subject to the oversight of IIROC and the OSC, respectively. CIPF is not a regulatory body.

8. The Appellant's main argument addressed the insolvency of the First Leaside Group. He submitted that all of the First Leaside Group entities were related parties and that the insolvency of FLSI caused the insolvency of the other entities. Global was a related entity of FLSI. As such, his investment in it was, in effect, subsumed within FLSI's insolvency, and this should result in CIPF coverage of the deficiency in the return of his invested funds.

9. CIPF Staff advised that there was no information with respect to this submission concerning the cause of FLSI's insolvency; however, it must be noted that some of the entities in the First Leaside Group did not, in fact, become insolvent and did continue in operation. He noted that each of the entities was a separate legal entity and was evaluated as to its ability to continue in operation. For those entities for whom that was not deemed possible, the entity was liquidated and any residue after creditors were satisfied was paid to the investors. The investors in each of the insolvent entities would have received a pro rata share of the insolvency proceeds; this resulted in different payouts for different investors, rather than one payout for all insolvent members of the First Leaside Group. This acknowledges the fact that each of the entities was a separate legal entity and was dealt with accordingly. The Appellant acknowledged receipt of payment from the insolvency Trustee.

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. The documentation

provided by the Appellant confirms that the certificate representing his investment were delivered to him.

11. The October 27, 2014 decision deals extensively with the misrepresentation argument submitted by the Appellant; that reasoning is adopted by this Appeal Committee. 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 May, 2015

Brigitte Geisler

Brigitte Geisler