

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

RE: [REDACTED]

Heard: January 14 and February 26, 2016

PANEL:

PATRICK J. LESAGE) Appeal Committee Member

APPEARANCES:

[REDACTED]) Appellant, on his own behalf
NICOLAS BUSINGER) Counsel for Canadian Investor Protection
Fund Staff

DECISION AND REASONS

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 the day after 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 in relation to an appeal heard on October 27, 2014, released on December 17, 2014.¹

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

2. This appeal was heard on January 14, 2016. After hearing from [REDACTED] and Counsel for CIPF Staff, at the request of [REDACTED], on consent, it was adjourned for further submissions on February 26, 2016. The adjournment/continuation was requested by [REDACTED] so that he could further examine available documents and consider his response to the submissions made by counsel for CIPF Staff. [REDACTED] made brief further submissions via teleconference on February 26, 2016.

3. [REDACTED] through FLSI invested \$74,500.00 in First Leaside Properties Fund (Series B) between May 10, 2010 and June 1, 2010. [REDACTED] made a claim to recover his losses on the basis of CIPF coverage. That claim was denied by Staff by letter of December 10, 2014.

4. [REDACTED] explained how he was repeatedly solicited by phone by First Leaside representatives. He did not succumb to the phone solicitations but with some reluctance attended a Christmas party presented by First Leaside Group. "The statements I was provided and the return expected looked good so I invested". [REDACTED] pointed out that his \$74,500.00 investment was to be invested on the basis of 20% low risk, 60% medium risk and 20% high risk.

5. At the hearing on January 14, 2016, [REDACTED] queried whether his investment was utilized as he was led to believe it would be, i.e. in investment properties. He submitted that if it wasn't used for the purpose of investment properties, protected by a mortgage, then his investment was unlawfully converted and he was entitled to compensation by CIPF. [REDACTED] also explained that had he known that FLSI was under investigation by the OSC at the time he invested, he would not have invested.

6. Mr. Businger, counsel for CIPF Staff, pointed out the First Leaside Properties Fund in which [REDACTED] had invested is not in receivership. He further pointed out that both the First Leaside Properties Fund Prospectus dated March 19, 2009, and the Amended and Re-stated Declaration of Trust provided, in part, as follows regarding the objects of the Fund:

b) The acquiring, investing in, holding, transferring, disposing of and otherwise dealing with securities of or lending to any First Leaside Group Member, provided that such securities or lending activities by their terms are no less favourable than the Master Sherman Notes.

7. CIPF Coverage extends to the custodial relationship between the investor client and the IIROC dealer. That coverage also includes unlawful conversion by the broker. It does not cover losses that might flow from malfeasance or fraudulent misrepresentation by the broker or by the salespersons of the invested entities themselves. Nor does it cover losses that flow from the diminution of the value of the investments. CIPF Coverage does not cover losses that may have occurred because the investor had not been advised at the time they made their investment that the First Leaside Group was, at that time under investigation by the OSC.

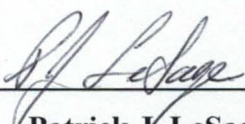
8. Further, even if the invested entity, First Leaside Property Fund Series B, used the funds [REDACTED] invested for a purpose other than the purposes [REDACTED] believed his investment was to be used, any loss flowing therefrom is not covered by CIPF. Although not relevant to the determination of this appeal it is to be noted that, as counsel for CIPF Staff pointed out, both the Prospectus and the Re-stated Declaration of Trust of the First Leaside Property Fund clearly describes that the funds received may in addition to being used to invest in real properties, may also be used as described heretofore in the paragraph 6 of this decision.

9. [REDACTED] provided a Direction to FLSI to purchase the First Leaside Property Fund units at a specific price. FLSI executed that purchase on [REDACTED] behalf. The certificates were forwarded as per [REDACTED] instructions.

10. The Appellant's loss is the result of the diminution of the 'recognized' value of the entity in which he invested. [REDACTED] has his certificates representing his investments. The entity is not in receivership. There has been no unlawful conversion of [REDACTED] investments by FLSI, the broker.

11. The appeal of Staff's decision denying [REDACTED] coverage must therefore be upheld. The appeal is dismissed.

Dated at Toronto, this 26th day of April, 2016



Patrick J. LeSage