

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

**RE:** [REDACTED], [REDACTED], [REDACTED]  
and [REDACTED]

**Heard: August 18, 2015, by teleconference**

**HEARD BEFORE:**

BRIGITTE GEISLER

Appeal Committee Member

**APPEARANCES:**

Maureen Doherty

) Counsel for Canadian Investor  
) Protection Fund Staff

[REDACTED]

)  
) On his own behalf and representing  
) [REDACTED], [REDACTED], and  
) [REDACTED]  
)

**DECISION AND REASONS**

**Introduction and Overview**

1. [REDACTED], [REDACTED], [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 (“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 in relation to an appeal heard on October 27, 2014.<sup>1</sup>

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 August 18, 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 was held at Neeson Arbitration Chambers in Toronto, Ontario. [REDACTED], representing all of the Appellants, was in attendance by teleconference.

### **Chronology of Events Relevant to the Appellants’ Claim**

#### *(i) The Appellants’ Investments and Claim*

4. The claim arises from the Appellants’ purchases of various First Leaside Group products for a total net claim by [REDACTED] of \$240,825 (which includes a reduction by [REDACTED] of \$11,437); by [REDACTED] of \$451,850 (which includes claims for stock dividends and undocumented amounts of \$11,054); by [REDACTED] of \$18,000 and by [REDACTED] of \$10,000.

5. Certificates representing the Appellants’ purchases were either transferred to accounts in the names of the Appellants at Fidelity Clearing Canada ULC, or delivered into the possession of the

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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”.

Appellants. The exception is the claim for 4,195 units of First Leaside Fund (Series C) by [REDACTED], for which information is not available.

(ii) *The Appellants' Application for Compensation*

6. The Appellants applied to CIPF for compensation for their losses in investments made through FLSI. By separate letters dated January 19, 2015, the Appellants were advised that CIPF Staff were unable to recommend payment of their claims. The relevant parts of the letters 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. The securities that you purchased were 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. 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 or the conversion of your property. 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.

**Analysis**

7. [REDACTED] stated that he was familiar with other FLSI decisions rendered by the Appeal Committee. His main issue was to address the misunderstanding of investors as to the extent of CIPF coverage. He noted that it was the impression of investors, and even financial advisors, that CIPF provided a safety feature with respect to investments. In particular, he had believed that CIPF would cover losses incurred if fraud, misrepresentation, or unlawful conversion had taken place.

8. [REDACTED] suggested that there should be better disclosure by CIPF in its documents and the use of its logo as he felt that the current disclosure was misleading. He stated that "if the only thing CIPF covers is that a worthless investment is returned, that's nothing". He stated that he didn't understand how his investment went to a zero value almost overnight.

9. A number of appeals have referenced a similar concern with respect to the use of the CIPF logo and the improper promotion of the extent of CIPF coverage as an incentive to making an investment. These comments are being taken very seriously and forwarded to the Board of Directors of CIPF for discussion and consideration.

10. A comment should be made with respect to the issue raised by [REDACTED] about the values shown on the Appellants' monthly statements. It appears that all of the FLSI customer statements would show a constant value, usually \$1/unit for the investment for the entire period of time that the investment was held, until February, 2012, when the value was shown as N/A (not available). The First Leaside Group products were not publicly traded; the value of the investment was supplied by the appropriate First Leaside Group entity. Once there was an application for insolvency, the prudent course of action by the carrying broker was to indicate that the value was N/A. The final value of the investment will be determined by the insolvency trustee.

11. The written submissions of the Appellants included the arguments raised by representative counsel at the October 27, 2014 appeal hearing. The October 27, 2014 decision addressed the arguments relating to 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 proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate projects.

12. 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.

13. CIPF's mandate and its coverage is custodial in nature; in other words, to ensure that the clients of an insolvent member have received their property. This custodial coverage is set out in

CIPF's mandate, which is approved by the OSC and other provincial securities regulators. The mandate is restricted to this coverage, and does not extend to coverage for fraud, material non-disclosure and/or misrepresentation. The nature and extent of the coverage is discussed in full in the October 27, 2014 decision.

14. While I have considerable sympathy for the Appellants, I conclude that the Appellants' submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

**Disposition**

15. The appeal is dismissed. The decision of CIPF Staff is upheld.

Dated at Toronto, this 31st day of August, 2015.

*Brigitte Geisler*