

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

RE: [REDACTED]

Heard: September 30, 2015, by teleconference

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

Nicolas Businger

)

Counsel for Canadian Investor

)

Protection Fund Staff

[REDACTED]

)

On his own behalf

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, 2014.¹

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 September 30, 2015, an Appeal Committee Member of CIPF's Board heard an appeal to determine whether to depart from the decision of CIPF Staff. The Appellant was in attendance by teleconference.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

4. The claim arises from the Appellant's purchase of a number of different First Leaside Group products for a total claim of \$1,037,154.55. This claim consists of purchases of securities and stock dividends received, and includes the sum of \$320,116.55² relating to undocumented purchases.

5. Certificates representing the Appellant's purchases were either delivered to the Appellant's possession or were transferred to an account in his name at Fidelity Clearing Canada ULC, with the exception of certificates relating to four purchases for which information were not available.

(ii) The Appellant's Application for Compensation

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

² CIPF Staff were unable to find the transactions (purchase, stock dividends or otherwise) of the Appellants claims for 1,719.36 units of FL Fund (Series C), 230,193 units of FL Fund (Series B), 528.75 units of FL Properties Fund (Class C), 96.92 units of Flex Fund (Class C) and 136,841.43 (claim of \$87,578.52) units of Wimberly Apartments LP.

6. The Appellant applied to CIPF for compensation for his losses in investments made through FLSI. By letter dated August 7, 2014, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant parts of the letter read as follows:

.... 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 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.

You also indicated that your loss, or part of it, was a result of “the default of an issuer of securities”. As mentioned above, losses arising from the default of an issuer of securities are not covered by CIPF.

Analysis

7. The Appellant expressed his views that the process of the appeal was a fruitless exercise in that no appellants had been successful in their appeals. He stated that it was shameful that CIPF was rejecting the claims of appellants, especially those of retirement age who were unable to replace their investments with the First Leaside Group.

8. The Appellant opined that FLSI had used CIPF as a marketing tool in order to attract customers. He noted that CIPF had paid on average \$800,000 a year in compensation to customers, which, he believed, was an indication of the failure of the organization to protect investors. He also questioned as to how CIPF had become involved with an organization such as FLSI.

9. Counsel for CIPF Staff explained the roles of the different regulatory organizations. He noted that all securities dealers are required to be members of CIPF, but that this does not represent an endorsement of the dealer by CIPF. It should be added that CIPF is not a regulator, nor does it have investigatory powers for possible securities violations; these are the purview of the OSC and IIROC.

10. Counsel for CIPF Staff also explained the role of CIPF with respect to custodial coverage, 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 loss in the value of a security, or for fraud, material non-disclosure and/or misrepresentation. The Appellant confirmed that he had received all of his securities.

11. In reviewing the Appellant's claim and the materials before me, it is noted that the Appellant made many purchases of First Leaside Group products prior to 2009. It was in the fall of that year that the OSC began its investigation into the First Leaside Group. The Appellant's communications to CIPF include comments with respect to the alleged misconduct of the First Leaside Group since 2005. No information has been provided as to any conduct, improper or not, in which the First Leaside Group was engaged prior to 2009 other than statements that they were very successful. In any event, as was fully discussed in the October 27, 2014 decision, CIPF's mandate does not extend to coverage for fraud, material non-disclosure and/or misrepresentation.

12. The Appellant made suggestions with respect to improvements which could be made to CIPF's communications, both with respect to financial advisors and the general public, none of which, he believed, understood the narrow custodial coverage which CIPF provides. As always, suggestions with respect to improvements for CIPF are noted and referred to the Board of Directors.

13. It is unfortunate that the Appellant suffered serious losses. However, 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

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

Dated at Toronto, this 13th day of October, 2015

Brigitte Geisler