

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

RE: [REDACTED]

Heard: February 17, 2015

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 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 IIROC on February 24, 2012, being the same date that 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 dated October 27, 2014¹. The Appellant was present at that hearing.

2. FLSI was declared to be insolvent on February 24th, 2012. Mr. [REDACTED] invested \$150,000 in 150,000 First Leaside Wealth Management Series II Preferred Shares on July 30, 2008. 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 CIPF Fund that 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 30th, 2010.

3. On February 17, 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 and was open to the public.

Chronology of Events Relevant to the Appellant's Claim

(i) The Appellant's Investments and Claim

4. The Appellant's claim arises from his investments in 150,000 preferred shares of First Leaside Wealth Management Series II ("FLWM SII"), purchased for \$150,000 July, 2008. At the date of FLSI's insolvency (February 24, 2012), the Appellant held the FLWM SII in certificate form.

(ii) The Appellant's Application for Compensation

5. The Appellant applied to CIPF in June, 2012 for compensation for his losses in investments made through FLSI. By letter dated December 23, 2013, the Appellant was advised that CIPF Staff were unable to recommend payment of his claim. The relevant part of the letter reads as follows:

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

At the date of insolvency, the security 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.

In addition, 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.

Analysis

6. The investment in FLWM SII was made in 2008, before any issues with respect to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI were being reviewed by the regulators. As described in the October 27, 2014 decision, the regulators' inquiries of FLSI began in the fall of 2009, the year following the investment by the Appellant. The Appellant acknowledged the receipt of regular payouts from his investments which continued until November, 2011, for a total of \$39,000.

7. In his submission, the Appellant addressed the extent and limitations of the CIPF coverage policy. It was his view that the reason for denial of his claim by Staff, namely that the loss was caused by a change in the market value of his investment, was not, in fact, correct. He submitted that the loss was caused by the abrupt interference of regulatory bodies external to FLSI, being the cease trade order issued by the Ontario Securities Commission and the suspension of membership by IIROC. It was after these events took place that the regular payments that he had been receiving from FLSI came to an end.

8. The Appellant made the observation that the actual physical location of the certificate representing his investment in the preferred shares was irrelevant. He submitted that reliance upon the "fine print" of the coverage policy by CIPF was contrary to the original mission of CIPF which was to contribute to the security and confidence of the customers of IIROC. He urged the Appeal

Committee to use its discretionary powers to offer the investors some sort of compensation and to restore the integrity of the regulators and CIPF.

9. Counsel for CIPF staff noted that the limitations provided in the CIPF coverage policy arise not only from the CIPF Board's mandate but also from the regulatory framework in which CIPF is governed. In the exercise of its discretion, the Appeal Committee must be mindful that the discretion must be exercised within the overall mandate of CIPF. In that regard, the location of the Certificate representing the Appellant's investment is relevant, and it is acknowledged by the Appellant that it was delivered to him. CIPF coverage is limited to the return of a customer's property, i.e. the proof of ownership of the investment. FLSI did not have possession of the Certificate, and accordingly, as stated in the letter from CIPF Staff dated December 23, 2013, CIPF coverage is not applicable.

10. Counsel for CIPF Staff also noted that the funds which the Appellant invested, were used as he had directed. It is unfortunate that the investments in real property investments made on his behalf were not profitable. It is apparent from the Grant Thornton Report, as referred to in the October 27, 2014 decision, that the deficiencies in the operations of the properties required additional infusions of cash to support the enterprise, which were seriously below equity in value. When notice of this was brought to the attention of investors by FLSI, further investments were not made which caused the enterprise to collapse. Seen in this light, the losses suffered by the Appellant are clearly losses due to a change in market value.

11. The Appeal Committee has considerable sympathy for the Appellant's position, and appreciate his attendance to put forth his submissions. 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

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

Dated at Toronto, this 20th day of February, 2015

Brigitte Geisler

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