



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Cindy Lorraine Makonin**

Heard: February 17, 2021 by electronic hearing in Vancouver, British Columbia

Decision: February 17, 2021

Reasons for Decision: April 5, 2021

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Michael Carroll, Q.C.  
Barbara Fraser  
Liz Chichka

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Janet L. Gartner	)	Counsel for the Respondent
	)	
	)	
Cindy Makonin	)	Respondent
	)	
	)	

## **I. SETTLEMENT AGREEMENT**

1. The Hearing Panel accepted the Settlement Agreement dated December 8, 2020, between the Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) and Cindy Lorraine Makonin (“Respondent”). A copy of the Settlement Agreement is attached to the Reasons for Decision as Schedule “1”. The agreed facts are as set out in Part III of the Settlement Agreement.

## **II. CONTRAVENTIONS**

2. The Respondent admitted that:

- a) Between September 2014 and February 2018, she copied and pasted the signatures of 4 clients from account forms previously signed by the clients into 11 new account forms, contrary to MFDA Rule 2.1.1.; and
- b) In December 2015, she obtained, possessed, and in some instances, used to process transactions, 9 pre-signed account forms in respect of one client, contrary to MFDA Rule 2.1.1.

## **III. AGREED PENALTIES**

3. The Respondent has agreed to the following penalties;

- a) A fine of \$7,500;
- b) Costs of \$2,500; and
- c) A prohibition from conducting securities related business in any capacity while in the employ or associated with any member of the MFDA for a period of 5 months commencing from the date the Settlement Agreement is accepted by the Hearing Panel.

## **IV. CONSIDERATIONS**

4. Pursuant to section 24.4.3 of MFDA By-Law No.1, the Hearing Panel must either accept or reject the Settlement Agreement.

5. In making a determination to accept or reject the Settlement Agreement we must take into account a number of factors including:

- a) Whether it would be in the public interest and whether the penalty imposed will protect investors;

- b) Whether it is reasonable and proportionate, having regard to the conduct of the Respondent and is within the acceptable range taking into account similar cases;
- c) Whether it will prevent the type of conduct described in the Settlement Agreement from occurring again, and
- d) Whether it will foster confidence in the integrity of the MFDA and the regulatory process itself.

*Sterling Mutuals Inc.* MFDA File No.200820 Hearing Panel of the Central Regional Council Decision and Reasons dated August 21, 2008 at para 34 and the decisions cited therein.

### **Appropriateness of the Proposed Penalties**

6. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor. In addition to protection of the investor, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

*Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2SCR 557(SCC) at paras 59 and 68.

7. Factors to be considered by Hearing Panels when determining whether a penalty is appropriate may include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) The harm suffered by investors as a result of the Respondent's activities;
- e) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity; and
- f) Previous decisions made in similar circumstances.

*Breckenridge* MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at p 21.

8. Counsel for the MFDA also referred us to the Sanction Guidelines of November 2018 which are not mandatory, but are intended to provide guidance to a Hearing Panel in the fair and efficient imposition of sanctions in both settled or contested disciplinary proceedings. They include

most if not all of the factors summarized in paragraphs 5 and 7 above and we have considered them in the present case.

### **Falsified Client Signatures**

9. In the present case the Respondent copied and pasted the signatures of 4 clients from the account forms previously signed by the clients onto 11 new account forms and submitted the forms to the Member for processing contrary to MFDA Rule 2.1.1.

10. The falsification of a client signature or initials is particularly serious. In *Barnai* MFDA File No. 201325 Hearing Panel of the Central Regional Council Decision and Reasons dated March 17, 2015 the Hearing Panel summarized the principles with respect to falsifying client signatures as follows:

“Falsifying client signatures is serious misconduct. Signature falsification ( like the use of pre-signed forms ) adversely affects the integrity and reliability of account documents, leads to destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse on the form of unauthorized trading, fraud and misappropriation.

11. By falsifying client signatures on account forms as described in Part III of the Settlement Agreement the Respondent engaged in misconduct that must be regarded as serious.

### **Pre-signed Account Forms**

12. The Respondent admits that she obtained, possessed, and used to process transactions, 9 pre-signed account forms contrary to MFDA Rule 2.1.1.

13. Hearing Panels of the MFDA, IIROC, and provincial securities commissions have stated that the possession and use of pre-signed account forms is prohibited.

*Price*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011 at para.135.

14. By obtaining, possessing, and using pre-signed account forms as described in Part III of the Settlement Agreement the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1 and thus engaged in misconduct that must be regarded as serious.

### **Post Bulletin Misconduct**

15. In the present matter the signature falsifications and use of pre-signed forms were committed after the MFDA issued Bulletin #0661-E on October 2, 2015. The Bulletin advised

Members and Approved Persons that staff would be seeking enhanced penalties and MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin. Hearing Panels have considered this to be an aggravating factor.

*Techer*, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016 at para.44.

### **Mitigating Factors**

16. The Respondent has not been previously disciplined by the MFDA. She admitted to her misconduct at the very early stages of MFDA's investigation into her misconduct and by entering into the Settlement Agreement has saved the MFDA considerable time, resources, and expenses associated with conducting a full hearing of the allegations.

17. An additional mitigating factor is that there is no evidence of client harm or complaint, nor is there any evidence that the Respondent received any financial or other benefit through her conduct.

18. We also note the Respondent has suffered serious repercussions as a result of her conduct. When her mistakes were identified she was terminated and thus lost her employment, her registration with the MFDA and the Insurance Council as well as the client base she had developed over 6 years. Although she no longer practices in the industry, she has agreed to a 5 month prohibition as a term of the Settlement Agreement.

### **Previous Decisions in Similar Cases**

19. Counsel referred us to several decisions in similar cases and we are satisfied that the Penalties imposed here fall within the acceptable range set out in those cases:

*Singh*, MFDA File No 2017110, Hearing Panel of the Central Regional Council Decision and Reasons dated December 8, 2017.

*Yip*, MFDA File No. 2017106, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 20, 2018

*Cruz*, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated March 7, 2019

20. We do note that in *Re: Johnny Wu*, MFDA File No. 201793, Hearing Panel of the Pacific Regional Council, Reasons for Decision dated January 29, 2018 the Hearing Panel accepted a fine of \$3,500 and costs of \$2,500 for conduct similar to the present case. However, the case can be distinguished on several grounds as follows:

- a) The violations were limited to signing the signatures on 5 account forms whereas in the present case there were 11 account forms;
- b) The violations occurred over a period of approximately 2-3 months whereas in the present case the falsifying of signatures occurred between February 2014 and September 2018; and
- c) The misconduct did not include the misuse of pre-signed account forms, and
- d) Mr. Wu received a prohibition of 6 months while still in active practice in the industry whereas the Respondent has left the industry.

**V. DECISION**

21. The Hearing Panel finds that the Settlement Agreement including the Penalties and Costs imposed is in the public interest and we accept it.

**DATED** this 5<sup>th</sup> day of April, 2021.

“Michael Carroll”

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Michael Carroll, Q.C.  
Chair

“Barbara Fraser”

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Barbara Fraser  
Industry Representative

“Liz Chichka”

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Liz Chichka  
Industry Representative

## Schedule "1"

### Settlement Agreement

File No. 202062



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Cindy Lorraine Makonin**

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## SETTLEMENT AGREEMENT

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### **I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Cindy Lorraine Makonin (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").
2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of By-law No.1.

### **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):
  - a) Between September 2014 and February 2018, the Respondent copied and pasted the signatures of 4 clients from account forms previously signed by the clients onto 11 new account forms, contrary to MFDA Rule 2.1.1.; and

- b) In December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 9 pre-signed account forms in respect of one client, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA for a period of five months commencing from the date the settlement agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
  - b) The Respondent shall pay a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
  - c) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
  - d) The Respondent shall in the future comply with Rules 2.1.1; and
  - e) The Respondent will attend the Settlement Hearing in person (via videoconference).
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### **Registration History**

7. From March 26, 2012 to October 2, 2018, the Respondent was registered in British Columbia as a dealing representative with De Thomas Wealth Management Corp. (the “Member”), a Member of the MFDA.
8. On October 2, 2018, the Member terminated the Respondent, and she is not currently registered in the securities industry in any capacity.
9. At all material times, the Respondent carried on business in the Chilliwack, British Columbia area.

### **Copied and pasted client signatures**

10. Between September 2014 and February 2018, the Respondent copied and pasted the signatures of 4 clients from account forms previously signed by the clients onto 11 new account forms, and submitted them to the Member for processing.

11. The account forms consisted of Purchase Ticket, Redemption Ticket and Know Your Client Update forms.

### **Pre-signed account forms**

12. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.

13. In December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 9 pre-signed account forms in respect of one client.

14. The pre-signed account forms consisted of Custom Fund Portfolios Rebalancing forms.

### **Member's Investigation**

15. In March 2018, the Member identified one of the copy and pasted account forms that is the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all the client files serviced by the Respondent and identified the remaining account forms.

16. In March 2018, the Member placed the Respondent under close supervision until October 2, 2018, at which time the Member terminated the Respondent.

17. As part of its investigation, the Member contacted or attempted to contact the affected clients to address the deficiencies in the account forms it identified, including to ensure there were no unauthorized transactions in their accounts. No clients complained or reported any concerns to the Member.

### **Additional Factors**

18. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

19. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

20. There is no evidence of any client loss or that the transactions were unauthorized.

21. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

#### **IV. ADDITIONAL TERMS OF SETTLEMENT**

22. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

23. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).

24. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in

the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;

- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

26. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

27. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

28. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 8<sup>th</sup> day of December, 2020.

“Cindy Lorraine Makonin”

\_\_\_\_\_  
Cindy Lorraine Makonin

“JG”

\_\_\_\_\_  
Witness – Signature

JG

\_\_\_\_\_  
Witness – Print Name

“Charles Toth”

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Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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**Re: Cindy Lorraine Makonin**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Cindy Lorraine Makonin (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that the Respondent:

- a) Between September 2014 and February 2018, the Respondent copied and pasted the signatures of 4 clients from account forms previously signed by the clients onto 11 new account forms, contrary to MFDA Rule 2.1.1; and
- b) In December 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 9 pre-signed account forms in respect of one client, contrary to MFDA Rule 2.1.1.

**IT IS HEREBY ORDERED THAT** the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA for a period of five months, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$7,500 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
3. The Respondent shall pay costs in the amount of \$2,500 in certified funds pursuant to section 24.2 of By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1; and
5. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

**DATED** this [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

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