

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant**

**Lucille E. Martin**

**vs.**

**NASD #93-01706**

**Name of Respondent**

**Crowell, Weedon & Co.**

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**REPRESENTATION**

**For Claimant: Dennis G. Merenbach, Esq.; and  
J. Leo Federman of Investor's Rights  
Association**

**For Respondent: John A. Blue, Esq. and Kevin P.  
Farmer, Esq. of Adams, Duque & Hazeltine**

**CASE INFORMATION**

**Statement of Claim filed: June 14, 1993**

**Claimant's Submission Agreement signed: October 9, 1993**

**Respondent's Statement of Answers filed: September 27, 1993**

**Respondent's Submission Agreement signed by D.A. Bonet,  
partner of Crowell, Weedon & Company on September 23, 1993.**

**HEARING INFORMATION**

**Hearing Date/(Sessions): April 12, 1993 (two sessions)  
April 13, 1993 (one session)**

**Hearing Location: Santa Monica, California**

### CASE SUMMARY

Claimant alleges that Respondent broker-dealer, in selling to her 360 units of IDM Participating Income Company IV and 190 units of IDM Participating Income Company V on 11/12/88 and 5/6/89 respectively, made fraudulent statements and omitted to state material facts; sold unsuitable securities; and breached its fiduciary duty to her in violation of Section 12 of the Securities Act of 1933; Section 10(b) and Section 20 of the Securities Exchange Act of 1934; SEC Rule 10-b-5; various sections of the California Corporations Code; and various sections of the NASD Rules of Fair Practice and Rules of the New York Stock Exchange.

Respondent admits the sales; denies unsuitability; alleges that offering circulars were provided to Claimant; that both securities issues were reviewed by the California Corporations Commissioner and that appropriate permits by the Commissioner were in effect; that Claimant is a sophisticated investor; that she made her own investment decisions; that real estate-related investments in 1988-9 were not regarded as speculative; and affirmatively alleges that the claims based on federal law are barred by the 1 year/3 year statute of limitations.

### RELIEF REQUESTED

Claimant requested in the prayer to her statement of claim: rescission of the sales; compensatory damages; interest; costs including attorneys fees, consulting fees, and expert witness fees; punitive damages; and exemplary damages. At the hearing Claimant digressed from the relief requested in her statement of claim, to a claim for \$68,777, computed to include return of the aggregate purchase price of \$55,000 less distributions made, plus interest at 10%.

### OTHER ISSUES CONSIDERED

The parties have agreed that the award may be issued in counterpart conformed copies; the original to be filed with the NASD.

### MOTION TO DISMISS

At the outset of the hearing Respondent moved for dismissal based upon the running of the statute of limitations. The panel took the motion under submission and reserved ruling thereon.

## FINDINGS AND CONCLUSIONS

1. The panel finds that at the time of the sales complained of Claimant was an 82 year old widow living in a retirement community, dependent on income generated from her account with Respondent of an approximate value of \$200,000-\$225,000 together with income generated from other accounts or investments having a value of \$35,000-\$50,000. Claimant's lawyer husband, who died in 1965, had been a part-time investor. Claimant's education included high school and business college, and her work experience was secretarial including a bank's trust department and the Santa Barbara Public Guardian's office. Claimant read financial publications and was actively interested in the market and in improving the income derived from her investments.

2. Respondent's account executive (not named as a respondent) was a young woman who had been assigned Claimant's account, along with accounts of others in the retirement community, by Respondent Crowell Weeden. In November, 1988 Respondent through its account executive actively solicited the purchase by Claimant of IDM Participating Income Company IV, a limited partnership, which, according to its offering circular, loaned funds to affiliates of its general partner, secured by commercial real estate, and which provided monthly distributions at an annual rate of 12%. Claimant, pursuant to such solicitation, sold Pilgrim GNMA Fund, which paid annual interest of 8.9% (computed on her purchase price but calculated at 10.4% on the then prevailing market price), and invested \$36,000 from the proceeds in the limited partnership.

3. Six months later Claimant, of her own volition, with no solicitation by Respondent or its account executive, and having read its offering circular, purchased \$19,000 of a similar limited partnership, IDM Participating Income Company V.

4. In September, 1991 the IDM Partnerships ceased their distributions, and are currently in bankruptcy. Claimant received shares in the bankruptcy estate, which appear to have little or no current or anticipated value. One or more class action lawsuits against IDM are pending, but class certification has not yet occurred.

5. No evidence was introduced to reflect, despite Claimant's age and financial circumstances and the illiquid nature of limited partnerships, that Respondent's branch manager, or its compliance department, or any other

supervisor, had conducted any suitability review of Claimant's account.

6. The panel finds that the first investment of \$36,000, solicited by Respondent, was unsuitable and a breach of Respondent's fiduciary responsibility to Claimant. The panel further finds that the second investment of \$19,000 was not solicited by Respondent and was initiated at Claimant's instance.

7. Other matters alleged in the Statement of Claim and the Statement of Answer were either not argued or were unsupported by credible evidence.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondent's Motion to Dismiss is denied. The applicable statute of limitations is four years as set forth in California Code of Civil Procedure Section 343; the cause of action accrued in September, 1991, within the four year period preceding filing of the claim.

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

A. Claimant is awarded the sum of \$24,600, to be paid by Respondent Crowell Weedon & Co., plus interest thereon at the annual rate of 8.9% from and after September 1, 1991 until paid.

B. Claimant's filing fees in this proceeding shall be paid to her forthwith by Respondent.

C. Claimant is entitled to no other damages.

D. Other than as set forth above, each party will bear his or its own costs, including attorney's fees.

#### FORUM FEES

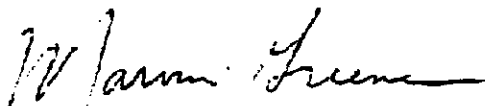
Pursuant to Section 43(c) of the Code of Arbitration Procedure the NASD shall refund claimant's hearing session deposit of \$500.00 and shall assess respondent \$1,500.00 in forum fees.

Fees are payable to the National Association of  
Securities Dealers Inc.

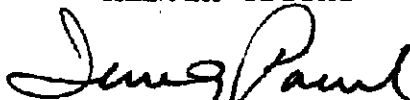
ARBITRATION PANEL

<u>Name</u>	<u>Public/Industry</u>
Marvin Greene, Chairperson	Public Arbitrator
Irving Porush	Public Arbitrator
Michael Burnett	Industry Arbitrator

Concurring Arbitrators' signatures:



Marvin Greene



Irving Porush



Michael Burnett

Date of Decision: May 5, 1994

Served 5/13/94