

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the matter of the Arbitration Between

Marjorie H. Turner, Individually and as Trustee for the  
Marjorie H. Turner trust dtd 3/12/82  
Claimant

NASD Arbitration  
No. 94-01035

v.

Crowell Weedon & Co.  
Allan MacDougall  
Respondents

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**REPRESENTATION**

For Claimant: Michael Huberman, Esq., of counsel to Greenbaum and Ferentz, Newport Beach, California

For Respondents: John A. Blue, Esq., and Kevin P. Farmer, Esq., of Adams, Duque & Hazeltine, Los Angeles, California; and James L. Sobieski, Esq., Santa Monica, California

**CASE INFORMATION**

Statement of Claim filed: March 17, 1994

Claimant's Submission Agreement signed: February 10, 1994

Statement of Answer filed by Respondents: June 17, 1994

Respondents' Submission Agreements signed:

Crowell Weedon: June 8, 1994

Allan MacDougall: May 24, 1994

**HEARING INFORMATION**

Pre-Hearing telephone conferences lasting one session each were held on April 13, 1995 and April 18, 1995.

The hearing was held in Los Angeles, California as follows:

April 20, 1995 - 2 sessions

April 21, 1995 - 3 sessions

### **CASE SUMMARY**

Claimant, who suffers from emphysema, alleged that in December 1992, (then aged 62), she transferred her account from another broker-dealer to Respondent Crowell Weedon, after informing Respondent MacDougall, a registered representative of Crowell Weedon and husband of her good friend, that her investment objectives were to preserve assets and seek income; that MacDougall recommended certain sales from her existing portfolio and certain purchases of non-dividend paying securities; that such purchases and sales did not meet her investment objectives; that without her authorization MacDougall engaged in a series of transactions in her account; that she protested to MacDougall; that he persuaded her not to reverse most of the transactions; that she protested the unauthorized transactions and unsuitability to the firm in writing; receiving no response she transferred the account away from Respondents effective July 2, 1993. The Claimant alleged fraud under Federal and California laws, rules and regulations, including SEC Rule 10b-5; unauthorized transactions; breach of fiduciary duty; unsuitability; failure to supervise; negligence; and violation of industry rules, regulations and customs. The Statement of Claim in addition alleged "fiduciary abuse" of Claimant citing California Welfare and Institutions Code Sections 15651(f) and 15657(a); and alleged unfair or deceptive acts against a senior citizen and disabled person in violation of California Civil Code Section 3345.

Respondents Crowell Weedon and MacDougall alleged that Claimant was an experienced investor, having been married to a stockbroker; that she had employed a number of broker-dealer firms; that Claimant owned an income producing interest in a farm; that after meeting with MacDougall she transferred her Paine Webber account to Crowell and opened an additional joint account with her son; that the transactions in her account met her goal as "aggressive income"; that the transactions in the account were authorized following discussion by Claimant with MacDougall and in some cases submission of financial and other reports. In addition, the respondents allege that the claim is barred by the one year/three year statute of limitations.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$23,000 or more; punitive and treble damages in the sum of \$27,000 or more; pre-judgment and post-judgment interest; costs; and attorneys' fees.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the hearing, the presiding arbitrator conducted two pre-hearing telephonic conferences; the first concerning discovery demands by both Claimant and Respondents for documents and information; the second concerning the alleged failure by Respondent Crowell to comply with the discovery order previously made, together with Claimant's motion for sanctions for failure to timely respond. The presiding arbitrator ruled that the motion for sanctions would be considered by the full panel at the conclusion of presentation of evidence. Such matter was subsequently presented to the full panel; the panel has determined in lieu of sanctions that the forum fee for the second pre-hearing

conference is to be paid by Respondent Crowell.

### **SPECIAL FINDINGS**

The arbitration panel submits the following findings with respect to this award:

1. Insufficient evidence was introduced to support any finding of fraud or misrepresentation;
2. Insufficient evidence was introduced, despite the panel's specific request for same, to reflect the applicability of the cited sections of the California Civil Code and/or Welfare and Institutions Code.
3. However, the panel finds that Respondent MacDougall engaged in certain transactions in Claimant's account (which was not a discretionary account) without Claimant's prior authorization; that transactions in Claimant's account which resulted in the diminishing of dividend income were unsuitable given Claimant's assets, sources of income, and stated objectives; that (no evidence having been introduced to reflect Crowell's compliance and supervisory procedures) Crowell's failure to respond to Claimant's several telephonic and written complaints addressed to Crowell's president and office manager (as well as to MacDougall) reflect a lack of supervision of MacDougall by Crowell in violation of industry rules and customs.
4. No evidence was introduced to support any breach of any statute of limitations.

### **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:

1. In satisfaction of Claimant's claims, Respondents Crowell Weedon & Co. and Allan MacDougall are jointly and severally liable for, and shall pay to Claimant, the sum of \$15,225, together with interest computed at 7% per annum from the date hereof until the date of payment of the Award.
2. Claimant's prayer for punitive damages is denied.
3. Claimants prayer for treble damages under the provisions of California Civil Code Section 3345 is denied.
4. Each party shall bear its own respective attorneys' fees and costs.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$120 non-refundable filing fee paid by Claimant.

Forum fees are assessed as follows:

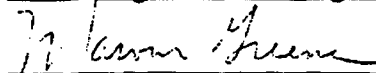
Total fees:	
2 pre-hearing telephone conferences @ \$300/session	\$ 600
5 hearing sessions @ \$400/session	<u>\$2,000</u>
	\$2,600
Claimant is assessed for one-half of the first pre-hearing conference	\$ 150
Credit for deposit	<u>\$ 300</u>
Refund due Claimant	( \$ 150 )
Respondent Crowell Weedon is assessed all remaining fees	<u>\$2,450</u>

Fees are payable to the NASD, Inc.

#### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Marvin Greene	Public Arbitrator
John L. Dampman	Public Arbitrator
Charles W. Christiansen	Industry Arbitrator

#### **Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Marvin Greene

\_\_\_\_\_  
John L. Dampman

\_\_\_\_\_  
Charles W. Christiansen

Served 5/18/95

Date of Decision: July 15, 1995

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