

**VERDICTSEARCH**
California Reporter**Trusts and Estates****Former trustee alleged to have mishandled trust investments**

Case Type: Breach of Fiduciary Duty, Fraud, Intentional Torts - Conversion

Case: Dennis Dubrow v. Matthew B. Mack, No. CIV182944

Venue: Superior Court of Ventura County, Ventura, CA

Judge: Frederick H Bysse

Date: 04-04-2003

PLAINTIFF(S)**Attorney:**

Silvio Nardoni; Law Offices of Silvio Nardoni; Glendale, CA, for Dennis Dubrow
Steven C. Wilhelm; Houck & Balisok; Glendale, CA, for Dennis Dubrow

Expert:

Allan Cutrow Esq.; Estates & Trusts called by: Silvio Nardoni
William Gamble; Damage Analysis called by: Silvio Nardoni

DEFENDANT(S)**Attorney:**

Jon D. Robinson; Nemecek & Cole; Sherman Oaks, CA, for Matthew B. Mack
Jonathan B. Cole; Nemecek & Cole; Sherman Oaks, CA, for Matthew B. Mack

Expert:

Warren Nagler; Suitability of Investments called by: Jonathan Cole, Jon Robinson
Peter Wrobel CPA; Damage Analysis called by: Jonathan Cole, Jon Robinson

Matthew B. Mack, an attorney, served as trustee for the \$500,000 Lorraine Konblett Charitable Remainder Unitrust (CRUT) from 1990 through September 1997. The trust instrument designated the American Cancer Society and the American Heart Association as the charitable remaindermen, but their designation was revocable in the sense that they could be replaced with other charitable beneficiaries by the first income beneficiary, Konblett, and the second income beneficiary, Sheila Schlichter, at any time and for any reason.

In accordance with the goals and directions of Konblett, the initial investments were in conservative tax-free bonds. Beginning in 1993, Mack undertook efforts to increase the income and growth of the trust by investing more aggressively in secured and unsecured loans, real estate general partnerships, and stocks, including some speculative tech stocks. The results were mixed, and the overall rate of return was about 6.7% up to the time Mack was replaced as trustee in October 1997. The real estate general partnerships, consisting of three separate investments, each involved an investment in a partnership in which Mack himself was the managing partner, and to the extent the partnerships were profitable, Mack received management fees in the form of a 25% share in the profits.

Initially, the income beneficiaries sued Mack for breach of trust, legal malpractice, fraud, breach of fiduciary duty, and conversion, among other things. The income beneficiaries were ultimately demurred out of the case, and the successor trustee, Hugo Ribadeneira, and subsequently plaintiff Dennis Dubrow, pursued the action against Mack on behalf of both the income and charitable



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California Reporter

remainder beneficiaries.

Dubrow asserted that Mack breached the duty of "impartiality" by favoring the income beneficiaries over the charitable remaindermen. Likewise, Dubrow contended that the real estate investments of the CRUT were "self-dealing transactions," for which he failed to obtain required consent and which constituted a breach of trust, constructive fraud and conversion. Dubrow also contended that Mack's investments violated the "prudent investor rule" and its predecessor, the "prudent person's rule." Mack contended that his handling of the CRUT as trustee was at all times within the standard of care. He maintained that he acted in accordance with the trust instrument and the needs and valid requests of the income beneficiaries, and acted consistently with the "prudent person rule" and the subsequent "prudent investor rule." Mack further argued that the real estate general partnerships, including Mack's receipt of a percentage of profits, were disclosed and consented to by the beneficiaries, to the extent such was required, and that the profits he received from the general partnerships were legitimate management fees. Finally, Mack asserted that the trust suffered no damage because the rate of return was adequate, and that it was inherently speculative that better results should or would have been obtained.

Injury:

Dubrow sought compensatory damages in excess of about \$400,000, plus punitive damages for the conversion and the constructive fraud causes of action.

Verdict Information: The jury returned a unanimous defense verdict.