

**AWARD**

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Emlen William Holmes, Jr.,  
Successor Trustee of the Thomas Hodgskin Dubois  
and Alice Ballantine Dubois

v.

Arbitration No.  
96-03905

Name of Respondent(s)

M.L. Stern & Co., Inc.  
Robert Yorba

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**REPRESENTATION**

For Claimant: Trenton J. Hill, Esq.,  
Jones, Bell, Abbott, Fleming & Fitzgerald, LLP  
Los Angeles, California

For Respondent: James D. Portman, Esq.,  
M.L. Stern & Co., Inc.,  
Beverly Hills, California

**CASE INFORMATION**

Statement of Claim filed: September 3, 1996

Claimant's Submission Agreement signed: August 29, 1996

Amendment to Statement of Claim filed: June 9, 1997

Joint Statement of Answer filed: February 24, 1997

Respondents' Submission Agreement signed:

M.L. Stern & Co., Inc.: February 26, 1997

Robert Yorba: March 31, 1997

### HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

October 20, 1997	-	1 session
February 18, 1998	-	1 session

The hearing was held in San Diego, California, as follows:

February 24, 1998	-	2 sessions
February 25, 1998	-	2 sessions
February 26, 1998	-	2 sessions
April 7, 1998	-	2 sessions
April 8, 1998	-	2 sessions

### CASE SUMMARY

Claimant alleged that the claim concerned transactions in the brokerage account of Thomas Dubois, a retired U.S. Naval Admiral, now deceased, which occurred from 1989 through 1995. During this time, the Admiral suffered a series of strokes that debilitated him both physically and mentally to the point that he was unable to care for himself or safeguard his financial well-being. Also during this time, Claimant alleged Respondents were in *de facto* control of the Admiral's account, and engaged in a series of transactions in the account which were inappropriate, economically unjustified and in violation of securities laws and rules of conduct. Claimant, as the Admiral's successor in interest, further alleged breach of fiduciary duty, unauthorized trading, and fiduciary abuse of a senior citizen pursuant to California Civil Code Section 3345. Claimant alleged that in July, 1992, while Admiral Dubois was recovering from a severe stroke and shortly after his wife, Alice, died, Respondents put the Dubois portfolio into the Putnam California Tax Exempt Fund after five years of investing mostly in municipal bonds. Almost immediately thereafter, Claimant alleged that Respondents accepted the first of two duplicate checks mistakenly sent by Admiral Dubois, did not return the checks but invested the funds in Putnam and the Stern Money Market Fund. Claimant alleged further that Respondents continued to actively trade the account in unsuitable mutual funds despite the condition of Admiral Dubois and instructions from Claimant here to minimize trading.

Respondents denied the allegations of the claim, and stated that at no time were they ever informed that Admiral Dubois was not competent to handle his affairs, nor did Admiral Dubois

exhibit incompetence in personal meetings. Respondents further stated that all investment purchased in the Dubois account were suitable given the stated account objectives. Respondents stated that Mr. Yorba recommended tax-free income securities, including individual tax-free municipal bonds, tax free municipal bond mutual funds, tax free municipal bond unit investment trusts and closed-end municipal bond funds. Respondents stated that all investments were fully discussed with Admiral Dubois prior to each transaction, and that all transactions were authorized by Admiral Dubois.

### **RELIEF REQUESTED**

Claimant requested damages of not more than \$200,000.00, plus punitive and exemplary damages, attorney's fees and costs.

Respondents requested dismissal of all claims.

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

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **AWARD**

The undersigned arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearing, and the post-hearing submissions, have determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant damages of \$31,350.00, plus interest at 8% per annum from date of award to payment in full.
2. All claims for relief not specifically granted are denied.
3. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimants' \$200.00 non-refundable filing fee.

Forum fees are assessed as follows:

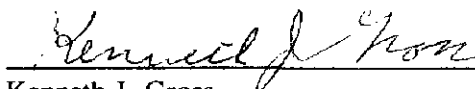
2 pre-hearing phone conferences @ \$300/session	\$ 600.00
10 hearing sessions @ \$750/session	<u>\$ 7,500.00</u>
Total:	<u>\$ 8,100.00</u>
Claimant's one-quarter share	\$ 2,025.00
Credit for deposit	<u>(\$ 750.00)</u>
Balance due:	<u>\$ 1,275.00</u>
Respondents' three-quarters share	<u>\$ 6,075.00</u>

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

Concurring Arbitrators Signatures:

Date signed:

\_\_\_\_\_  
William L. Merkin  
Presiding Chairperson  
Public Arbitrator

\_\_\_\_\_  
  
Kenneth J. Gross  
Public Arbitrator

\_\_\_\_\_  
*May 7, 1998*

\_\_\_\_\_  
Robert H. Hughes  
Securities Industry Arbitrator

Date served: 5/20/1998

Forum fees are assessed as follows:

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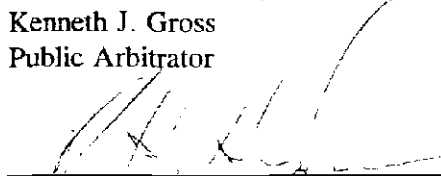
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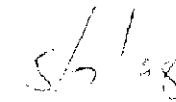
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Securities Industry Arbitrator

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5/21/98

Date served: 5/20/1998

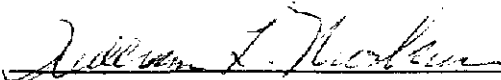
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