

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jeffrey & Judith Kaliser
Jeffrey Kaliser, TTEE-Uchitel, Kaliser PSP

vs.

91-03343

Name of Respondents

Midlantic Securities Corp.
Jim Higgins

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 23, 1991, Claimants Jeffrey & Judith Kaliser, who appeared Pro Se, alleged the on March 27, 1991 they contacted Respondent Midlantic Securities Corp. to request that they take the necessary steps to convert Claimants' 2,000 shares of Astrotech International Corp. Convertible Preferred stock to common stock, at which time, they advised Respondents there was a time limit on the conversion. Claimants further alleged that they contacted Respondent Jim Higgins on April 2, 1992 to confirm the conversion, at which time, Respondent Jim Higgins assured Claimants that the conversion was done but the paperwork did not yet come through. Claimants contended that on April 5, 1991 Respondent Jim Higgins contacted them to inform them that the conversion had not been done. Claimants further contended that they have since sold the stock but if the conversion had taken place as requested, they would have made additional proceeds, thus, Claimants suffered a loss due to Respondents' failure to make the conversion.

Respondents Midlantic Securities Corp. and Jim Higgins by and through Leon J. Lieberman, President, maintained that Claimants Jeffrey and Judith Kaliser did not advise them that there was a time limit on the conversion and that on March 29, 1991 Respondent Midlantic Securities Corp. was closed for the conduct of business. Respondents further maintained that in order to effectuate the conversion, the securities had to be physically delivered. Respondents contended that they were unable to ascertain on this date whether in fact they had stock certificates in the proper denominations to deliver the correct number of shares to effect the conversion by the end of the exchange period. Respondents further contended that the fact that

Claimants failed to request the conversion until literally the eleventh hour. Respondents were completely unable to effect the conversion requested by Claimants in the exchange period, therefore, Respondents are not liable for any alleged loss.

RELIEF REQUESTED

Claimants Jeffrey and Judith Kaliser requested \$8,080.00 in actual damages. Claimant Jeffrey Kaliser, as Trustee, requested \$2,686.06 in actual damages.

Respondents Midlantic Securities Corp. and Jim Higgins requested the claims be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert F. Sanville, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 16, 1991 and by the Respondents on April 2, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Midlantic Securities Corp. and Jim Higgins are jointly and severally liable and shall pay to the Claimants Jeffrey and Judith Kaliser the sum of \$478.00 in damages.
2. The parties shall bear their respective costs.
3. The \$275.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Jeffrey and Judith Kaliser shall be retained by the NASD, Inc. Respondents Midlantic Securities Corp. and Jim Higgins are jointly and severally liable and shall pay to the Claimants the sum of \$275.00 as reimbursement.

The Arbitrator agrees with the Claimants that the Respondents could have effectuated the conversion of the preferred shares into the common shares within the required, extended time period. The Claimants indicated the purpose of the conversion was to sell the common stock. The proceeds from the sale of the common shares on April 1, 2 or 3 would have been less than the proceeds from the eventual sale of the preferred. The Arbitrator has determined that the Claimants suffered no direct damages from the Respondents failure to convert. The Arbitrator believes the Respondents should have handled the eventual sale of the preferred without commission to the Claimants and awards Claimants \$478. Additionally, the Arbitrator believes the Respondents should bear the NASD filing fee.

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AFFIRMATION

I, **ROBERT F. SANVILLE**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: December 16, 1992