BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1910/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Haris Papadopoulos,

- Claimant -

represented by Ms. Ntimi Papadopoulou, attorney at law,

vs.

Mr. Joshua Nebo,

- Respondent -

represented by Mr. Ivan Todorovic, attorney at law,

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1. The Parties

1.1 The Claimant

1. Mr. Haris Papadopoulos (the "**Agent**" or "**Claimant**") is a professional basketball agent of Cyprian nationality.

1.2 The Respondent

2. Mr. Joshua Nebo (hereinafter the "**Player**" or the "**Respondent**") is a professional basketball player of U.S. nationality.

2. The Arbitrator

3. On 7 February 2023, Mr. Raj Parker, Vice-President of the Basketball Arbitral Tribunal (the "**BAT**"), appointed Ms. Annett Rombach as arbitrator (the "**Arbitrator"**) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (the "**BAT Rules**"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. The relevant facts and allegations presented in the Parties' written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.

5. On 16 January 2021, the Agent, acting as President of the agency Life Sports Agency, and _________ (a further representative of Life Sports Agency), entered into a "Contract of Representation" with the Player (the "**Representation Agreement**"),

pursuant to which the Player employed the Agent as his agent (Clause 1 of the Representation Agreement). At the time, the Player was playing his rookie season for the Israeli club Hapoel Eilat BC.

6. Clause 4 of the Representation Agreement provided for the following exclusivity clause:

> *"Under the precondition and in compliance with the terms contained with paragraph 4 below:*
>
> ***4.1*** *The Parties hereby agree that the Agent by virtue of the present Agreement will acquire and have the exclusive right to place and/or otherwise decide upon the employment and/or assignment of the Players'* [sic] *services to any club which is a member of any Federation recognized by FIBA and/or NBA.*
>
> ***4.2*** *The Player hereby agrees and accepts that during the validity of the present Agreement, the Agent is entitled to allot and/or assign his rights, for the benefit of any third party who is registered as a basketball agent by virtue of the FIBA regulations and/or for the benefit of any legal entity on the pre-condition that at least one registered basketball agent participates on the Board of Directors of the aforesaid legal entity."*

7. The Agent was to receive compensation for his services under Clause 3 of the Representation Agreement as follows:

> *"**3.1** For any contract the Player signs during the present agreement, the Player agrees that the agent shall receive an agent's fee of 10% of the Player's base net salary.*
>
> ***3.2*** *The agent fees shall be collected directly from the Club, NOT from the Player. The Player shall only be liable to pay the Agent directly in case the Player signs any professional contract during the term of this Agreement procured by a 3rd party or procured by the Player without the Agent's involvement or if the Player terminates without just cause prior to the expiration date. In such a case, the Player agrees and accepts that the Agent shall still be entitled to receive 10% of the total income of the employment contract procured by a 3rd party or directly by the Player, between the Player and the Club subject to clause 4 below and the Player shall be liable to pay the Agent immediately.*
>
> ***3.3*** *The Agent's fee shall be compensation for all the services to be provided by the Agent according to this contract. The Agent shall not be entitled to reimbursement of any"*

8. The term of the Representation Agreement, including its renewal and termination, was agreed as follows (Clause 5):

> *"**5.4** This Agreement shall begin on the day of signature hereof by both parties and shall expire on the 16th of January 2023. This agreement shall be automatically renewed on*

the expiration date, for a subsequent year, unless terminated in writing by the player and/or the agent in accordance with the terms of 5.5 below.

5.5 *Any party has the right to terminate this agreement provided they sent to the other party a written notice of termination 1 (one) month prior to the expiration date subject to article 5.4. In case the Player terminates according to the above then the Agent shall still be entitled to receive the agency fees on the employment contracts the player had signed during the term of the agreement and the notice of 1 (one month)* [sic].*"*

9. In May 2021, the Player left Hapoel Eilat BC prematurely before the end of the 2020-21 season due to the increasingly tensed conflict between Israel and the Palestinian Hamas. The Agent arranged and paid for the Player's flight tickets to the U.S. via Cyprus, including overnight hotel expenses in Cyprus.

10. During the summer 2021, the Agent arranged and paid for the Player's trainings and workouts in Los Angeles, and for certain travel expenses.

11. On 21 June 2021, the Agent procured an employment contract between the Player and the Lithuanian club Zalgiris Kaunas BC ("**Zalgiris**") for the 2021-22 season (the "**Zalgiris Contract**"). The Zalgiris Contract contained an extension option for the 2022-23 season.

12. On 22 June 2021, the Agent sent a letter to Zalgiris in which he authorized the club to deduct the amount of USD 8,600.00 from the Player's salary and to pay that amount directly to the Agent as a reimbursement of the Agent's expenses. The Player did not approve the letter, and no respective deduction was made by Zalgiris.

13. On 1 January 2022, FIBA introduced new rules for agent contracts in Book 3, Chapter 9 of the FIBA Internal Regulations ("**FIBA IR**"). In relevant part, the FIBA IR provide as follows:

"316. A FIBA-Licensed Agent may represent a client or manage a client's affairs under the terms of article 3-314 only if the FIBA-Licensed Agent has concluded a written Agent Contract with the client in question.

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> *317. A FIBA-Licensed Agent shall make use, to the extent possible, of the master agreement between FIBA-Licensed Agents and players or clubs as provided by FIBA (see Appendix 1 to this Book 3).*
>
> *318. The duration of an Agent Contract shall not exceed a period of two (2) years, but it may be renewed through a new written contract of the parties. Every Agent Contract shall provide that each party shall have the right to terminate at will with thirty (30) days' written notice.*
>
> *319. Agent Contracts shall not foresee remuneration for services in relation to a Player contract that exceeds, in total, ten per cent (10%) of the value of the Player contract."*

14. On 1 March 2022, the Agent and the Player had a conversation about his career and future plans.

15. On 2 March 2022, the Player's former club Hapoel Eilat BC filed a claim against the Player before the BAT (BAT 1892/22), alleging that the Player breached the employment contract by leaving the club before the expiry of the agreement.

16. On 7 March 2022, the Player sent the following WhatsApp message to the Agent:

> *"Hey Haris I just wanted to inform you that I will be terminating our contract and changing my representation to _________. This is a hard decision because I believe we developed a very strong relationship over the past year, and you have done a great job representing me as an agent. I truly have appreciated all You have done for me over the past year. I have always spoken highly of you and the agency to everyone I talk to. But I believe this is the best decision for me and the one that I'm deciding to make at this point in my career. I hope You will respect my decision. I have a game soon, so I can't speak on the phone, but if you want to talk to me we can talk tonight. I just emailed you the termination letter as well."*

17. On the same day, the Player sent a termination notice (the "**Termination Notice**") to the agent, via e-mail, as follows:

> *"Dear Sirs,*
>
> *It is with sincere regret that I must inform you that I have decided to end our business relationship and terminate our "Contract of Representation" signed on 16th of January 2021. I no longer wish to retain you as my agent. At this time I feel it is in my best interest to go in a different direction. Also, I ask from you to delete my name from your FIBA list of players, from your company web site and do not talk to any teams or anybody else on my behalf, as of today 7th of March 2022, which is around 4 months before the season is*

finished.

This termination is served in accordance with the new FIBA Internal Regulations governing Players' Agents that are in force as of 1st of January 2022, as our "Contract of Representation" is fully governed by, as agreed in Article 2 of it, therefore each party have the right to terminate contract at will, with the thirty (30) days written notice, which I am doing with this termination letter. It means that our "Contract of Representation" shall be deemed effectively terminated 30 days from this termination letter, without need for any further notice.

I want to be clear that I have the utmost respect for you; however, at this time I think it is in my best personal interest to hire someone else as my agent.

Since at this point of the season I must be fully focused on playing and performing well, if there are any questions regarding this termination, please be so kind to get in touch to my Attorney at Law Mr. Ivan Todorovic at e-mail address _________

Sincerely,

Mr. JOSHUA NEBO, basketball player"

18. On 16 March 2022, the Agent, through legal counsel, rejected the Termination Notice, arguing that the Player had no contractual right to terminate the Representation Agreement prematurely. He reminded the Player that he would have to compensate the Agent in the event that he joined a new club without the Agent's involvement.

19. In June 2022, media reports spread rumours that the Player would join the Israeli club Maccabi Tel Aviv ("**Maccabi**"), and that he would receive an annual salary of USD 800,000.00. On 27 June 2022, the Player entered into an employment agreement with Maccabi (the "**Maccabi Contract**").

20. On the same day, the Player's new agent, _________, sent a WhatsApp message to the Agent informing him that the Player's salary under the Maccabi Contract was USD 700,000.00 and not USD 800,000.00 (as reported in media articles).

21. The Maccabi Contract, in its full and unredacted version provided by Maccabi during these BAT proceedings upon the Arbitrator's request (see below at para. 44), provided for the following terms, as far as relevant for this case:

*"**The Period of the Agreement** and termination of the Previous Agreement.*

5.1 Subject to Section 8.4(a) below, this Agreement is drafted for the period starting on 27.6.2022 and ending seven days after the last game of the 2022/2023 game season (in the Israeli League or any other League in which the Club decides to participate instead of the Israeli League (hereinafter in this Agreement the "Other League"), Israeli cup or Euroleague, whichever is later), for the 2022/23 game seasons. If the basketball season has been extended by the Association or by the Euroleague or by any other body that manages the Euroleague or the Other League as the case may be, this agreement will automatically be extended. […]"

"*6.1 Salary*

a. For the 2022/23 game season: the sum of 3,222,000 NIS_ (gross), equal, on the signing date of the Agreement, to US $ 700,000 (net of all Israeli taxes) (US $ 933,800 (gross);

The above salary per each relevant season will be paid in 10 (Ten) equal, consecutive monthly payments, starting on /September 15th, of each season. First salary will be paid September 15, 2022 or 8 days after successfully passing medical examination as written in clause 8.3.

[…]

6.3 Bonus in respect of Code of Conduct.

a. The Player will be entitled to a bonus in the amount of up to 460,000 NIS (gross), equal, on the signing date of the Agreement, to US $ 100,000 (net of all Israeli taxes) (US $ 133,400 (gross) per season, for the full and complete compliance with the provisions of the Code of Conduct of the Team, a copy of which is attached as Exhibit A hereto (the "Code of Conduct"). The Bonus will be paid to the Player together with the last salary of the relevant season.

b. Without derogating from any other remedy available to the Team, the Team will be entitled to deduct from the aforesaid bonus any amount it deems fit and appropriate for any breach of the Code of Conduct by the Player."

22. On 1 July 2022, Maccabi officially announced the Player's hiring also for the 2022-23 season.

23. On 7 July 2022, the Agent's counsel sent a notice to the Player requesting him to compensate the Agent as per the terms of the Representation Agreement (i.e. 10% of his total income with Maccabi).

24. On 18 July 2022, the Player's counsel sent a letter to the Agent, stating – in relevant part – the following:

> *"Regarding your statement from Formal Notice you have sent to my client on 16th of March 2022, that new FIBA Internal Regulations which are in force as of 1st of January 2022 are not applicable for any Representation Contract which entered into prior to 1st of January 2022, we must say this is simply not true.*
>
> *In Article 2 (FIBA Internal Regulations governing Players* [sic] *Agents) of the Contract of Representation between Life Sports Agency and Mr. Nebo that was signed 16th of January 2021, it is clearly stated:*
>
> *'The Parties agree that their relationship under this contract, in particular their respective rights and duties shall be governed by the FIBA Internal Regulations governing Agents (hereinafter the "FIBA Agent Regulations"),* ***as amended from time to time.***
>
> *In particular, the parties agree to be entitled to and bound by the respective rights and duties provided for in the FIBA Agent Regulations.'*
>
> *So, the Parties agreed that any change in the FIBA Internal Regulations governing Players* [sic] *Agents (FIBA Agent Regulations) shall be automatically incorporated in the Contract of representation between Life Sports Agency and Mr. Nebo, and therefore, their relationship will be governed by same regulations "as amended from time to time".*
>
> *In FIBA Internal Regulations, that are in force as of 1 January, 2022, in Book 3 – Players and officials, Chapter 9: Agents – Agent contracts, in Article 320 regarding Agent Contracts, it is clearly stated:*
>
> *"The duration of an Agent Contract shall not exceed a period of two (2) years, but it may be renewed through a written contract of the parties.* ***Every Agent Contract shall provide that each party shall have the right to terminate at will with thirty (30) days' written notice."***
>
> *So that is exactly what Mr. Nebo did, with Termination letter sent to Life Sports Agency on the 7th March 2022, with 30 days written notice, so the Contract of representation was deemed effectively terminated with the expiry of 6th of April 2022.*
>
> […]"

25. On 16 November 2022, the Agent (through legal counsel) sent a settlement proposal to the Player, which the latter rejected on the same day.

26. On 22 November 2022, the Agent (through legal counsel) sent a final notice to the Player, requesting payment in the amount of USD 70,000.00, *i.e.* 10% of the Player's annual salary under the Maccabi Contract. The Player did not make any payment, and did not reply to the request.

27. On 27 April 2023, in an interview for basketnews.com, the Player's new agent, _________, was asked about the Player's future at Maccabi. In reply to this question,

_________ was quoted as follows:

> *"Josh Nebo is under contract for the following year. They're very happy, and he's very happy, so there's nothing to say"*

28. On 18 July 2023, Maccabi announced that the Player would stay with the club for the 2023-24 season.

3.2 The Proceedings before the BAT

29. On 23 January 2023, the BAT received a Request for Arbitration (together with several exhibits) filed by the Claimant in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 4,000.00 had been received in the BAT bank account on 30 November 2022.

30. On 8 February 2023, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited the Respondent to file his Answer in accordance with Article 11.4 of the BAT Rules by no later than 1 March 2023 (the "**Answer**"), and fixed the amount of the Advance on Costs to be paid by the Parties by 20 February 2023 as follows:

> *"Claimant (Mr. Haris Papadopoulos)   EUR 4,500.00*
> *Respondent (Mr. Joshua Nebo)   EUR 4,500.00"*

31. On 20 March 2023, within the time limit extended by the Arbitrator at the Respondent's request, the Respondent filed its Answer.

32. On 21 March 2023, BAT acknowledged receipt of the Claimant's share of the Advance on Costs and noted the Respondent's failure to pay his share. In accordance with Article 9.3 of the BAT Rules, the Claimant was invited to substitute for the Respondent's (yet unpaid) share in order to ensure that the arbitration could proceed.

33. On 4 April 2023, BAT acknowledged receipt of the Respondent's Answer and of the full

amount of the Advance on Costs, paid by the Claimant. The Arbitrator invited the Claimant to comment on the Answer, by no later than 18 April 2023 ("**Reply**").

34. On 18 April 2023, the Claimant filed his Reply and requested that an e-mail exhibited to the Reply would not be disclosed to the Respondent, for confidentiality reasons. In his Reply, the Claimant requested that the Arbitrator order the Respondent to disclose and produce the Maccabi Contract.

35. On 20 April 2023, BAT informed the Claimant that his confidentiality interests could be sufficiently secured by redacting relevant parts of the e-mail which contained the confidential information. The Claimant was invited to submit a redacted copy of the exhibit, which the Claimant did on the same day. Still on the same day, BAT acknowledged receipt of the Claimant's Reply and invited the Respondent to file his comments ("**Rejoinder**") by no later than 4 May 2023 (later extended, upon the Respondent's request, until 17 May 2023).

36. On 17 May 2023, the Respondent filed his Rejoinder.

37. On 26 June 2023, the BAT, on behalf of the Arbitrator, requested the Respondent to produce the Maccabi Contract, by no later than 3 July 2023 (the "**Production Order**"). The reasoning for the Production Order reads as follows:

> *"Should it turn out that the Claimant has a claim for the payment of 10% of the Respondent's salary under the Maccabi Contract, the Claimant is deprived of any opportunity to obtain the relevant financial information, because it is not a party to the contractual relationship between the Respondent and Maccabi Tel Aviv.*
>
> *BAT proceedings are confidential. Respondent's alleged confidentiality interests can be preserved by an order of the Arbitrator or the BAT President to keep any resulting award confidential (see Article 16.5 of the BAT Rules).*
>
> *The Arbitrator also notes that should the Respondent not comply with the request to disclose the Maccabi Contract, she may request production of the contract directly from Maccabi Tel Aviv, or draw adverse inference from the Respondent's non-compliance."*

38. On 3 July 2023, the Respondent requested an extension of the time limit to comply with

the Production Order, and raised confidentiality concerns.

39. On 5 July 2023, the BAT granted the requested extension until 7 July 2023. With regard to the Respondent's confidentiality concerns, the BAT informed the Parties as follows:

> "[…] *In this respect, the Arbitrator wishes to highlight that the Respondent is permitted to redact any such confidential information. For the purpose of the present arbitration, the relevant information is the financial compensation the Respondent was to receive under the Agreement with Maccabi."*

40. On 7 July 2023, the Respondent submitted a redacted version of what he claimed to be the Maccabi Contract. The BAT invited the Claimant to file his comments on the Maccabi Contract by no later than 19 July 2023.

41. On 19 July 2023, the Claimant filed his comments on the Maccabi Contract, claiming – *inter alia* – that the Maccabi Contract was presumably entered into for two seasons, not only for one, as claimed by the Respondent. The Respondent was invited to comment on the Claimant's submission by no later than 30 August 2023. In addition, the BAT informed the Parties as follows:

> *"The Arbitrator understands that Mr. Nebo will be under contract with Maccabi Tel Aviv for the 2023-24 season. The Respondent is herewith requested to confirm that this information is correct.*
> *If Respondent so confirms, Respondent is further requested to provide information and evidence on the contractual basis of the Player's 2023-24 employment with Maccabi. More specifically, the Respondent is requested to explain whether the basis for the Player's 2023-24 employment is the Agreement submitted (in redacted form) to BAT on 12 July 2023 (e.g. through an extension option) or a new agreement.*
>
> *The Arbitrator further informs the Parties that she reserves the right to confirm the information on the Player's contractual relationship through a direct request from the BAT to Maccabi Tel Aviv."*

42. On 30 August 2023, the Respondent filed his comments.

43. On 11 September 2023, the BAT acknowledged receipt of the Respondent's comments and invited the Claimant to file further comments by no later than 25 September 2023.

The Claimant filed his comments on 26 September 2023 (03:26 am).

44. On 27 September 2023, the Arbitrator requested Maccabi to provide to the BAT a copy of the Maccabi Contract (including annexes and appendices), by no later 9 October 2023. Maccabi submitted a copy of the Maccabi Contract to the BAT on 8 October 2023.

45. On 16 October 2023, BAT invited both Parties to comment on the unredacted version of the Maccabi Contract (provided by Maccabi on 8 October 2023) by no later than 26 October 2023. The Respondent filed his respective comments on 20 October 2023. The Claimant, after having received an extension, filed his comments on 31 October 2023.

46. On 9 November 2023, the Arbitrator (in accordance with Article 12.1 of the BAT Rules) declared that the exchange of documents was completed and requested the Parties to submit their detailed cost accounts by 16 November 2023. The Parties submitted their respective cost accounts on 13 November 2023 (Respondent) and on 16 November 2023 (Claimant).

47. As neither of the Parties requested to hold a hearing, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to render the award based on the written record before her.

4. The Position of the Parties

4.1 The Claimant's Position and Request for Relief

48. The Claimant submits the following in substance:

- The Respondent had no right to terminate the Representation Agreement

prematurely on 7 March 2022 (on the basis of Article 3-320 of the FIBA IR), prior to the expiry of the initial two-year term, for the following reasons:

- The new FIBA IR only became effective on 1 January 2022*, i.e.* after the conclusion of the Representation Agreement, which was signed on 16 January 2021. Therefore, the Respondent cannot benefit retroactively from the termination right included in Article 3-320 of the FIBA IR, which did not exist at the time the Parties made their agreement.
- The Parties' agreement enshrined in the Representation Agreement is clear and supersedes the FIBA IR (irrespective of the issue of its temporal scope). It provides that the Representation Agreement is valid for two years, without any option to terminate it earlier (but for the payment of a 10% penalty). The FIBA IR may only become relevant when the Parties have no specific clause in their agreement that addresses a relevant issue, which is not the case here.
- In BAT 0541/14, the Arbitrator found that the FIBA IR may apply to the Parties' contractual relationship by reference (like general terms and conditions), but that they do not trump the individually agreed terms of an agency agreement. In case of discrepancy, the terms of the agency agreement must prevail. In BAT 0901/16, the Arbitrator found that any violations of the FIBA IR do not *per se* invalidate the contractual arrangements between a player and an agent/agency. These BAT awards are still good law.
- Nothing indicates that the Parties' intention when they signed the Representation Agreement was for the Player to reserve a right to terminate the contract based on the FIBA IR.
- The signing of the Representation Agreement occurred in a rather typical manner. The Player simply signed the contract put before him, without asking any questions. Hence, nothing suggests that the Player wanted

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the Representation Agreement to include certain specific terms, let alone an incorporation of the FIBA IR regulating agents.

- Hence, because the Player's termination of the Representation Agreement was unlawful, pursuant to Clause 3 of the Representation Agreement, he is obligated to compensate the Agent at 10% of any contract signed by him until 16 January 2023.
- It is not true that the Player terminated the Representation Agreement due to an alleged dissatisfaction with the Claimant. The Player only terminated the Representation Agreement because his new agent promised him to get him a *"a million dollar deal"*.
- According to consistent BAT jurisprudence, the Player would have been entitled to terminate the Representation Agreement immediately and extraordinarily only for and upon proof of just cause*, i.e.* in the event of and due to a repudiatory breach by the Claimant, which never occurred.
- By reaching out to the Claimant on 27 June 2022, the Player's new agent, _________, acknowledged the Claimant's claim for agency fee compensation for the 2022-23 season.
- The Claimant is also entitled to damages in the amount of USD 11,000.00. In order for the Player to leave Israel during the missile crisis, Claimant paid for flights from Israel to Cyprus and from Cyprus to the U.S., as well as for accommodation and further travel expenses in Cyprus. During the summer 2021, the Claimant also advanced the costs for the Player's travelling to Los Angeles, accommodation, and summer training in Los Angeles. Even though the Player refused to sign the letter drafted on 22 June 2021 (which stated that the Player would authorise Zalgiris Kaunas BC to deduct the amount of USD 8,600.00 from his salary and pay that amount to the Agent directly), it was still the intention of both parties for these expenses to be reimbursed to the Claimant.
- When the Player (unlawfully) terminated the Representation Agreement, the

Claimant lost the possibility to have these amounts amortized. They are a frustrated investment (made in the expectation of a minimum duration of the Representation Agreement of two years), because the Agent lost the possibility to earn any future agency fee due to the premature termination. Consequently, the amount of USD 11,000.00 became due and payable, as damages, upon the termination of the Representation Agreement. The expenses incurred by the Claimant are no usual expenses borne by agents.

- The Respondent's net salary (according to what has been disclosed in the Maccabi Contract) for the 2022-2023 season was USD 700,000.00. The buy-out fee of USD 50,000.00 paid by Maccabi to Zalgiris is irrelevant and does not reduce the Agent's fee, which is to be calculated solely on the basis of the net salary.
- The Player's *"Bonus in respect of Code of Conduct"* according to Clause 6.3 of the Maccabi Contract in the amount of USD 100,000.00 has to be taken into consideration for the Agent's 10% compensation calculation. Hence, the Claimant is entitled to USD 80,000.00 as agent compensation for the 2022-23 season. This is also proven by Clause 8.7 of the Maccabi Contract, in which the total fees for the Player's new agents amount to USD 80,000.00 (10% of USD 800,000.00).
- The Claimant believes that the Maccabi Contract was also made for the 2023-2024 season, or that the extension of that contract was at least negotiated still during the validity of the Representation Agreement. Maccabi rarely signs players for just one season without any written commitment for a second year. Therefore, the submission that the contract for the 2023-24 season was only signed on 15 February 2023 (i.e. after the Representation Agreement had expired) is rather suspicious. The Respondent did not submit any evidence as to the negotiation history for the second contract.

49. With his Request for Arbitration, the Claimant initially requested the following relief:

*"1. The Respondent Player shall pay the Claimant **$70,000** NET as compensation plus late payment interest of 5% per annum from July 1st 2022 until the date of payment OR 10% of the Respondent Player's total net receivables arising from his employment agreement with Maccabi Tel-Aviv if higher;*

*2. The Respondent shall pay Claimant **$11,000** NET for expenses incurred plus late payment interest of 5% per annum from July 1st 2022 until the date of payment;*

*3. The Respondent shall reimburse the Claimant for all BAT expenses and Advance on Costs as these will be calculated by the Arbitrator as well as the non-reimbursable handling fee of **EUR 4,000** already paid by the Claimant;*

4. The Respondent shall reimburse the Claimant for incurred legal expenses with the final amount depending on the submissions to be determined in the course of the proceedings."

50. After the disclosure of the unredacted Maccabi Contract, the Claimant, on 31 October 2023, amended his request for relief as follows:

*"a. the amount of **$80,000** representing the agency fees of the 2022-2023 season plus 5% interest per annum from the day the contract with Maccabi was signed until its effective and entire payment;*

*b. the amount of **$11,000** representing expenses borne by the Claimant on the Respondent's behalf plus 5% interest per annum from the day the representation agreement was terminated by the Respondent until its effective and entire payment;*

c. the Respondent to be borne with the entire costs of this arbitration, legal fees as well as for the non-reimbursable handling fee of EUR 4,000.

d. In the event that Arbitrator decides that the Claimant is entitled to receive compensation in regards to the second season of 2023-2024, then, the Claimant would accept an amount deemed appropriate by the Arbitrator."

4.2 Respondent's Position and Request for Relief

51. Respondent submits the following in substance:

- The Player was entitled to terminate the Representation Agreement when he sent the Termination Notice on 7 March 2022. Therefore, the Claimant is not entitled to any compensation under the Representation Agreement. The Maccabi Contract was signed after the Termination Notice.
- The Player was unhappy with the quality of the Claimant's services. The Claimant

poorly managed the Player's situation at Hapoel Eilat. The Player was the only out of many players that had left Eilat due to the tensed political situation who was later sued by Hapoel Eilat before the BAT.

- The Respondent was entitled to terminate the Representation Agreement pursuant to its Clause 2 in connection with the FIBA IR because:
  - Both Parties explicitly agreed that any change to the FIBA IR shall be automatically incorporated into the Representation Agreement, "*as amended from time to time*". The Respondent wanted to ensure that the most current version of the FIBA IR would govern the Parties' relationship, including any rules implemented after the signing of the Representation Agreement. This is specifically true in light of the fact that the 30-day termination right later incorporated into the FIBA IR had already been subject to public debate when the Representation Agreement was signed.
  - The Respondent was very interested in the forthcoming changes to the FIBA IR in the run-up to the signing of the Representation Agreement, because 15-days termination notices are standard in the U.S., his home country. The Claimant explained to him that it would just be a matter of time until FIBA would prescribe on the Parties a thirty (30) days termination notice requirement. The Respondent insisted that this should be incorporated into the Representation Agreement, through a dynamic reference to the FIBA IR. Hence, Clause 2 of the Representation Agreement automatically incorporates the FIBA IR, including the relevant changes which became effective on 1 January 2022.
  - Although the new FIBA IR provide for the possibility of inserting a financial penalty clause in case of early termination ("*Agents remain entitled to insert financial penalty clause in the contract*"), these clauses are not inserted automatically into agent contracts. There is no such financial penalty clause in the Representation Agreement.

- The Player, contrary to the Agent's advice, decided to leave Israel in May 2021 because he was in a life-threatening situation. The Claimant paid for the Player's airplane ticket, but he never requested those costs from Hapoel Eilat, which was ultimately responsible to cover them. The Claimant made the payments to keep the Player happy and never mentioned that he expected the Player to pay this money back to him. The first time the Claimant requested a refund of the travel and accommodation expenses from the Respondent was after the termination of the Representation Agreement.
- There was never an agreement that the Respondent would reimburse the Claimant for his expenses, let alone in writing, as required by Clause 3.3 of the Representation Agreement. In BAT 1692/21, which was based on a similar reimbursement clause, the Arbitrator rejected the Agency's claims entirely. The letter drafted on 22 June 2021 does not serve as evidence since it was not communicated to the Respondent at any time and consequently not signed by it.
- _________ never acknowledged the Claimant's right to receive an agency fee compensation.
- The BAT jurisprudence on which the Claimant relies has no legal bearing for the present case, because this case is different, and the BAT decisions are outdated.
- The Player's salary stated in the Maccabi Contract for the 2022-23 season has to be reduced by USD 50,000.00 to USD 650,000.00. Maccabi had to pay a buy-out fee of USD 50,000.00 to Zalgiris in order to be able to sign the Player.
- In any event, the Player did not sign a two-year contract with Maccabi Tel Aviv on 27 June 2022, but a one-year contract only for the 2022-23 season. The Player subsequently signed an employment contract with Maccabi Tel Aviv for the 2023-24 season on 15 February 2023, i.e. after the expiry of the initial term of the Representation Agreement. Therefore, the Agent is not entitled to any compensation for the 2023-24 season.
- The Player's *"Bonus in respect of Code of Conduct"* in the amount of

USD 100,000.00 according to Clause 6.3 of the Maccabi Contract is not part of the Player's base guaranteed net salary because it is subject to the condition that the Player, throughout the term of the contract, complies with Maccabi's Code of Conduct.

- The Claimant's request for reimbursement of training expenses is not justified. The Player's trainings and workouts in Los Angeles during the summer of 2021 were arranged and initiated by the Agent, who agreed to cover all the expenses, as those are typical agent's investments and they can be requested from a player only if contractually agreed, which was not the case.

52. In his last submission dated 20 October 2023, the Respondent requested the following relief:

> *"To deny all of the Claimant's requests in entirety because of the facts and evidence provided here, condemning the Claimant to pay all the arbitration costs of this BAT procedure and to pay his legal fees and expenses and also, condemning Claimant to pay Respondent's legal fees and expenses."*

5. The Jurisdiction of the BAT

53. Pursuant to Art. 2.1 of the BAT Rules, *"[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland"*. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law ("PILA").

54. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

55. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.

56. The Representation Agreement contains the following dispute resolution clause in

favour of BAT (Clause 8):

> *"Any dispute arising from or related to the present contract shall be submitted to the FIA Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of arbitration shall be Geneva, Switzerland.*
>
> *The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of parties' domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute ex eaquo [sic] et bono."*

57. The arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.

58. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA). The Parties to this arbitration are expressly identified as parties to the Representation Agreement in the recitals, and are thus bound by the arbitration clause *ratione personae*. The Respondent did also not dispute BAT's jurisdiction.

59. Hence, the Arbitrator has jurisdiction to decide the present dispute.

6. Other Procedural Issues

60. The Claimant filed a submission for which the BAT had set a time limit until 25 September 2023 only on 26 September 2023, at 3:26 am CET, *i.e.* late. However, the Arbitrator finds that the slight delay of less than 3 and a half hours has evidently not caused any delay to the proceedings. The Respondent has also not objected against the admissibility of the Claimant's comments. Therefore, the Arbitrator decided to admit those comments to the record.

7. Applicable Law – ex aequo et bono

61. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides

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that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “en équité” instead of choosing the application of rules of law. Article 187(2) PILA reads as follows:

> *“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.*

62. Under the heading "Applicable Law to the Merits", Article 15.1 of the BAT Rules reads as follows:

> *“15.1 The Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.*
>
> *15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.”*

63. In the arbitration agreement quoted above at para. 56, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.

64. The concept of “équité” (or ex aequo et bono) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage[1] (Concordat)[2], under which Swiss courts have held that arbitration “en équité” is fundamentally different from

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[1] That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

[2] P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

arbitration "en droit":

> *"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[3]

65. This is confirmed by Article 15.1 of the BAT Rules in fine, according to which the Arbitrator applies "*general considerations of justice and fairness without reference to any particular national or international law*".

66. In light of the foregoing considerations, the Arbitrator makes the findings below.

8. Findings

67. The Claimant pursues the following claims in the present arbitration:

- A claim for agency fee compensation under Clause 3.2 of the Representation Agreement (below at **8.1**), and
- A claim for damages/reimbursement of expenses allegedly made by him on behalf of the Player (below at **8.2**).

8.1 Agency Fee Compensation

68. The Agent claims that because of the Player's allegedly illegal termination of the Representation Agreement, he is entitled to receive agency fee compensation for any employment contract the Player signed between the date of the Termination Notice (7 March 2022) and the originally agreed expiration date of the Representation Agreement (16 January 2023). In the Agent's view, this includes, in particular, the

3 JdT 1981 III, p. 93 (free translation).

Maccabi Contract signed by the Player on 27 June 2022. The Agent bases this claim on Clause 3.2 of the Representation Agreement, which reads as follows (emphasis added):

> "[…] *The Player shall only be liable to pay the Agent directly* ***in case the Player signs any professional contract during the term of this Agreement procured by a 3rd party or procured by the Player without the Agent's involvement or if the Player terminates without just cause prior to the expiration date****. In such a case, the Player agrees and accepts that the Agent shall still be entitled to receive 10% of the total income of the employment contract procured by a 3rd party or directly by the Player, between the Player and the Club subject to clause 4 below and the Player shall be liable to pay the Agent immediately.*

69. The factual basis underlying the Agent's claim under Clause 3.2 of the Representation Agreement is principally undisputed. In particular, it is undisputed that:

- The Parties signed the Representation Agreement on 16 January 2021;
- The initial term of the Representation Agreement ran until 16 January 2023;
- The Player sent the Termination Notice to terminate the Representation Agreement on 7 March 2022;
- The Agent rejected the Termination Notice;
- The Player signed the Maccabi Contract on 27 June 2022, procured by a third party without the Agent's involvement.

70. What is in dispute between the Parties is whether the Player's termination of the Representation Agreement was "without just cause", which is required for the Agent to be entitled to compensation under Clause 3.2. While the Agent argues that the Player's termination was unjustified and had no legal basis, the Player maintains that he was entitled to the termination, and that, as a result, the Representation Agreement had ceased to be valid before he signed the Maccabi Contract.

8.1.1 Did the Player validly terminate the Representation Agreement on 7 March 2022?

71. The primary basis for the question of whether the Player validly terminated the Representation Agreement on 7 March 2022 is the contract itself. Pursuant to its Clause 5.4, the Representation Agreement was to expire regularly on 16 January 2023, *i.e.* after the Player had signed the Maccabi Contract. In accordance with Clause 5.5, the Parties had a right to terminate the Representation Agreement by giving a written termination notice "*1 (one) month prior to the expiration date*" set in Clause 5.4. In such case, the Player remained obligated to pay the agent agency fees for any contract procured (with or without the agent's services) as from the termination notice until the expiry of the contract.

72. The termination regime addressed in Clauses 5.4 and 5.5 of the Representation Agreement demonstrates that the Parties wanted to exclude the Parties' right to terminate the contract prematurely, before the expiry of the initial two-year term. They did not provide for any ordinary termination right, but agreed that the Representation Agreement should be effective for a minimum of two years. The Player relies on two arguments to claim that the Representation Agreement ended before the expiry of the two-year term, irrespective of the limited termination options enshrined in Clause 5.5 of the Representation Agreement.

73. First, the Player argues that his termination was supported by "just cause", because the Agent, in May 2021, was not *"able to resolve the situation with Hapoel Eilat and left the Respondent to be the only player who was sued, out of 16 players which left the country and never returned to the league that season".* This incident allegedly triggered the Player's belief that the Agent was not the best solution to manage his career. The Player has not elaborated on what exactly the Agent had done wrong, and which of his contractual duties under the Representation Agreement the Agent had breached. Remarkably, nothing of the Agent's alleged misconduct is mentioned in the Termination Notice. To the contrary, the Termination Notice suggests that the Respondent was

happy with the Claimant's services, stating that "[t]*his is a hard decision because I believe we developed a very strong relationship over the past year, and you have done a great job representing me as an agent.*" Therefore, the Arbitrator considers that the Respondent's complaints, raised for the first time in these proceedings, constitute a *post hoc* defense invoked solely for the purpose of improving his legal position in this dispute. As a result, the Arbitrator finds that the Respondent has not demonstrated "just cause" supporting his early termination of the Representation Agreement.

74. Second, the Player argues that he validly terminated the Representation Agreement in accordance with the 2022 FIBA IR, more specifically Article 3-320[4], which provides that *"*[e]*very Agent Contract shall provide that each party shall have the right to terminate at will with thirty (30) days' written notice".* This Article was implemented into the FIBA IR effective 1 January 2022. It did not exist at the time the Parties signed the Representation Agreement.

75. Accordingly, the Representation Agreement does not reflect any such right by a party to terminate the contract at any time with a notice period of 30 days. However, Clause 2 of the Representation Agreement provides that the Parties' *"relationship under this contract* […] *shall be governed by the FIBA Internal Regulations governing Agents* […] *as amended from time to time"* (emphasis added) and that they *"agree to be entitled to and bound by the respective rights and duties provided for in the FIBA Agent Regulations"*. The Respondent argues that the dynamic reference to the respective current version of the FIBA IR (including its Article 3-320) in Clause 2 of the Representation Agreement furnished him with the right to terminate said agreement with 30 days' notice. Such reference, however, directly contradicts the termination regime expressly agreed in Clauses 5.4 and 5.5 of the Representation Agreement, providing for a fixed initial term of 2 years without any ordinary termination right before

[4] Article 3-318 in the current FIBA Internal Regulations (as of 30 April 2023).

the expiration of such period. The core question is how this conflict is to be resolved.

76. In BAT 0541/14, the Arbitrator had to deal with an agency contract providing for the same dynamic reference to the FIBA IR as found in Clause 2 of the Representation Agreement. In that case, it was held that the explicit reference to the FIBA IR meant that the "*FIBA Internal Regulations apply to the contractual relationship of the Parties by reference, like general terms and conditions*" but that they do *"not trump the individually agreed terms*" (see BAT 0541/14, para. 49) and "[t]*he Parties did not refer to a particular version of the FIBA Internal Regulations, but, by way of a dynamic reference, to the version in force at the time when a specific issue had to be resolved, namely today.* […]*".*

77. The Arbitrator agrees with the principles established in BAT 541/14. When the Parties expressly provide for certain terms in their individually negotiated contract, they demonstrate their intent that these shall be the primary terms to govern their legal relationship, whereas a mere and generic reference to other terms and conditions – in this case the FIBA IR – shall govern subsidiarily only if the terms individually agreed between the Parties do not address the issue at hand. In fact, the term and termination of an agency contract are key elements in any player-agent-relationship. Clauses 5.4 and 5.5 of the Representation Agreement are not just "boilerplate" language added through a copy-paste exercise. They are important and significant, in particular for the Agent, who makes investments into a contracted player, and needs a certain time period for these investments to have a prospect of amortization. The present case is an illustrative example for the purpose of narrow termination rights in agent-player relationships. The Agent covered numerous expenses which fell in the Player's sphere (including travelling, accommodation and training camp expenses), in the expectation that these expenses would pay off over time. The Player's early termination fully frustrated the Agent's amortization expectations.

78. Against this backdrop, the Respondent's unproven allegation that he insisted on the

insertion of a dynamic reference to the FIBA IR into the Representation Agreement to ensure that he would benefit from any newly incorporated 30 days' notice period cannot be credited. It is neither proven nor reflected anywhere in the terms of the contract. It would have been easy to incorporate into the Representation Agreement a clarification that the termination provisions in the FIBA IR shall prevail over the contractual terms. In the absence of such provision, the Arbitrator is not prepared to accept the Respondent's unfounded submission regarding the relationship between the Representation Agreement and the FIBA IR.

79. For the avoidance of doubt, the Arbitrator wishes to highlight that Article 3-320 of the FIBA IR does not have the purpose to deprive agents of their prospect of generating revenues with players in which they have invested time and money (on this aspect see also BAT 1877/22). The purpose of the introduction of more flexible termination rights in agency contracts is to avoid that a basketball player is stuck for years in a relationship with an agent with whom he is not happy, given the highly personal nature of this relationship and the mutual trust required for its success. At the same time, FIBA has clarified that the right to terminate does not preclude agents from recovering compensation from players who opt for an early termination.

80. In a publicly available Q&A session / slide presentation offered by FIBA on Article 3-320 FIBA IR at the time when the new regulations were introduced, FIBA explained that

> *"the fact that FIBA recognises the termination of that contract doesn't mean that the agent cannot go in front of BAT and say this player owes me X amount of money because of the penalty. So the player is free to sign with any other agent or feel free to terminate and FIBA will recognise the termination but the consequences of the termination can be subject to litigation and indeed the agent could win the litigation and the player would be bound and obliged to pay this penalty to the agent and the BAT could decide this and FIBA also would even be in a position to enforce, regardless of the fact that we recognised the termination".*

81. This is precisely the system indicated in Clause 3.2 of the Representation Agreement, which provides that "*if the Player terminates without just cause prior to the expiration date*", "*the Player agrees and accepts that the Agent shall be entitled to receive 10%*

of the total income of the employment contract procured by a 3rd party or directly by the Player." Hence, even if the FIBA IR trumped the individually agreed termination regime in the Representation Agreement and allowed the Player to terminate the contract prematurely (*ad arguendo*), the Agent would still be entitled to receive compensation, as laid out in Clause 3.2, and as permitted by FIBA.

82. In summary, the Arbitrator finds that, because the termination regime enshrined in Clauses 5.4 and 5.5 of the Representation Agreement prevails over the FIBA IR, the Player's termination of the Representation Agreement was not supported by just cause. As a result, the Agent is entitled to receive compensation under Clause 3.2 of the Representation Agreement.

8.1.2 Quantum of the Agent's compensation

83. Clause 3.2 of the Representation Agreement also addresses the quantum of the Agent's compensation, which is "*10% of the total income of the employment contract procured by a 3rd party*". The relevant contract is the Maccabi Contract, which has been disclosed by Maccabi upon the Arbitrator's respective disclosure request, after the Respondent had refused to disclose the contract in unredacted form for confidentiality reasons.

84. Before the disclosure of the Maccabi Contract, the Claimant maintained that the contract was made for two seasons. In fact, it is undisputed that the Player played for Maccabi beyond the first season, but the Respondent alleges that the extension of the Maccabi Contract was agreed only in February 2023, i.e. after the Representation Agreement had undisputedly expired. In this context, the Arbitrator notes that the Claimant does not contest that the (invalid) Termination Notice has to be read as a (valid) non-renewal notice resulting in the termination of the Representation Agreement at the end of the initial 2-year-term (i.e. on 16 January 2023).

85. The Maccabi Contract provides for the following term:

> *"5.1 Subject to Section 8.4(a) below, this Agreement is drafted for the period starting on 27.6.2022 and ending seven days after the last game of the 2022/2023 game season […] for the 2022/23 game seasons."*

86. This one-season term is not subject to any extension option. In Clause 8.12(c), the Maccabi Contract provides that its written text provides for the entire agreement between the Parties, and that any modifications need to be made in writing. Therefore, the Maccabi Contract is entirely clear in that it was concluded only for one season. Even if the Claimant were right that the Player and Maccabi had contemplated from the beginning to extend the contract to a second year, and only chose the structure of two separate and subsequent contracts to avoid that the Claimant earns an agent fee for the second season, the Parties are free to do so, and the Arbitrator does not consider such conduct reprehensible.

87. Therefore, the Agent is entitled to receive, as per Clause 3.2 of the Representation Agreement "*10% of the total income of the employment contract procured by a 3rd party*". It is undisputed that this amount includes the Player's base salary stipulated in Clause 6.1 of the Maccabi Contract, which is USD 700,000.00 (net).

88. The Claimant argues that, because Clause 3.2 of the Representation Agreement refers to the "*total income of the employment contract*", his agent fee must also include the Player's "*Bonus in respect of Code of Conduct*" provided in Clause 6.3 of the Maccabi Contract:

> *"The Player will be entitled to a bonus in the amount of up to […] US $ 100,000 (net of all Israeli taxes) […] per season, for the full and complete compliance with the provisions of the Code of Conduct of the Team […]. The Bonus will be paid to the Player together with the last salary of the relevant season."*

89. The Respondent argues that this "bonus" (hereinafter referred to as the "**Compliance Bonus**") cannot be considered a part of the Player's base guaranteed annual salary,

as it is subject to possible deductions if the Player violates Maccabi's Code of Conduct.

90. The Arbitrator notes that the Representation Agreement provides for different reference amounts in respect of the agent fee. While Clause 3.1 of the Representation Agreement refers to *"10% of the Player's base net salary"* (in cases in which the Agent earns a fee during the normal course of business), Clause 3.2 refers to *"10% of the total income of the employment contract"* (in cases of compensation for breach of the exclusivity or after an untimely termination of the contract). In light of the fact that the compensation in Clause 3.2 of the Representation Agreement constitutes a penalty payable for breach of contract or early termination, the Parties are principally free to deviate from the reference amount provided for the agent's "normal" remuneration, and to agree on a higher amount (within the limits of proportionality).

91. Therefore, the Arbitrator considers that the Compliance Bonus shall be included in the Player's "total income" for the purpose of calculating the Agent's compensation under Clause 3.2 of the Representation Agreement. Deciding *ex aequo et bono*, the Arbitrator finds this result fair and just, also in light of the fact that this "bonus" is nothing more but an (additional) payment to the Player for honouring an obligation that he has anyway: to comply with his contract. The Compliance Bonus is therefore not comparable to other bonuses which depend on the achievement of certain milestones or successes. Furthermore, the Arbitrator notes that the Compliance Bonus was also included into the compensation that the Player's new agents received for procuring the contract with Maccabi (see Clause 8.7 of the Maccabi Contract, which provides for a total agent fee of USD 80,000.00).

92. Finally, the Arbitrator dismisses the Respondent's further argument that the buy-out fee of USD 50,000.00, which Maccabi had to pay to Zalgiris, has to be deducted for the purpose of calculating the Agent's compensation. There is no basis for any such deduction in the Representation Agreement, and the Respondent has not explained why a payment necessary to make the Player a free agent shall have any influence on

the Agent's compensation.

93. Therefore, the Agent is entitled to an amount of USD 80,000.00 (10% of USD 800,000.00) in agency fee compensation for the Player's signing of the Maccabi Contract.

8.2 Reimbursement of expenses

94. The Agent requests the reimbursement of expenses in the total amount of USD 11,000.00, which he allegedly incurred in the summer of 2021, for the Player's accommodation, training and workout sessions and his flights from Israel to the U.S. The Agent asserts that it was the Parties' common understanding at that time that the Player would reimburse those expenses to the Agent. The Respondent denies such "common understanding". He argues that the Parties never agreed (let alone in writing, as required by Clause 3.3 of the Representation Agreement) on the reimbursement of any of these expenses.

95. Clause 3.3 of the Representation Agreement reads as follows:

> *"The Agent's fee shall be compensation for all the services to be provided by the Agent according to this contract. The Agent shall not be entitled to reimbursement of any expenses unless otherwise agreed in writing."*

96. Clause 3.3 is no basis for the Agent's reimbursement claim. In fact, it clearly contradicts this claim. The Agent failed to prove that an agreement in writing that the Player would cover his expenses exists. The Player has disputed the existence of any such agreement. The Agent's letter to Zalgiris (see above at para. 12) was not approved and not signed by the Player. Similarly, the other communication provided by the Claimant to support his claim does not fulfil the requirements of Clause 3.3 of the Representation Agreement. The fact that the Respondent accepts that the Agent's incurred the alleged expenses is not a consent that he would reimburse the associated costs.

97. Furthermore, the Claimant also has no claim for damages in the amount of these expenses. The alleged damages claim rests on the theory that the Claimant's investments in the Player became frustrated as a result of the early termination of the Representation Agreement. However, the Agent receives compensation under Clause 3.1 for the Player's signing of the Maccabi Contract. Hence, the Agent's investments are already amortized through this compensation, which protects the Agent's financial interests throughout the contractual term of the Representation Agreement.

98. Thus, the Arbitrator decides that the Agent's reimbursement claim must be dismissed in its entirety.

8.3 Interest

99. With regard to his agent fee compensation, the Claimant requests 5% interest per annum from 27 June 2022 (the signing date of the Maccabi Contract).

100. The Representation Agreement does not provide for any provision concerning interest. According to constant BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. In line with BAT's jurisprudence, the applicable interest rate is 5% per annum.

101. The compensation payment provided for in Clause 3.2 of the Representation Agreement is due *"immediately"*, i.e. as of the date of the event that triggers the claim (here, the signing of the Maccabi Contract). In line with previous BAT jurisprudence, the Arbitrator finds that interest shall be payable from the day after the due date. In accordance with these principles, the Claimant is entitled to default interest at 5% per annum on the amount of USD 80,000.00 from 28 June 2022 until the date of payment.

8.4 Summary

102. The Agent is entitled to the amount of USD 80,000.00 in agent fee compensation, plus interest of 5% p.a. on this amount as from 28 June 2022.

9. Costs

103. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

> *"At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4).* […]*"*

104. On 13 March 2023, the Vice-President of the BAT determined the arbitration costs in the present matter to be EUR 8,900.00.

105. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:

> *"The award shall determine which party shall bear the arbitration costs and in which proportion.* […] *When deciding on the arbitration costs* […]*, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties."*

106. The Claimant entirely prevailed with his request for compensation (request for relief no. a.), USD 80,000.00), and fully lost on his request for reimbursement of expenses (request for relief no. b.), USD 11,000.00). The quota of success in relation to these two requests is 88%. Request No. d.), which the Claimant introduced only in the alternative, if the Arbitrator considered that the Maccabi Contract was signed for more than one year, will not be taken into consideration by the Arbitrator for her determinations on costs. In this respect, the Arbitrator notes that the Respondent contributed significantly to the uncertainties in respect of the term of the Maccabi

Contract, by not disclosing a full and unredacted version of this contract. Respondent's argument that he could not disclose the Maccabi Contract for confidentiality reasons cannot be credited. The designated use of the Maccabi Contract was strictly limited to this BAT proceeding, and as a frequent user of BAT arbitration clauses, basketball clubs are well aware that contracts may have to be disclosed in BAT arbitrations for various legal reasons. Accordingly, it is not surprising that Maccabi readily disclosed the full contract upon the BAT's request, without invoking any confidentiality defense.

107. In consideration of these circumstances, the Arbitrator finds that the Claimant shall bear 12% of the arbitration costs, and Respondent shall bear 88% of the arbitration costs (i.e. EUR 7,832.00). The balance of the Advance on Costs, in the amount of EUR 140.00, will be reimbursed to Mr. Haris Papadopoulos by the BAT.

108. Regarding the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that

> "[…] *as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding […] on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties."*

109. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for the amount in dispute in the present case (between EUR 30,001.00 and EUR 100,000.00) according to Article 17.4 of the BAT Rules is EUR 7,500.00.

110. As per his account on costs, the Claimant incurred lawyer's fees and expenses in the amount of EUR 9,100.00, which he voluntarily capped at the maximum amount reimbursable under Article 17.4 of the BAT Rules for a claim of up to EUR 100,000.00 (EUR 7,500.00). The Respondent claims reimbursement of lawyer's fees and expenses

in the amount of EUR 10,000.00, assuming that the Claimant's alternative request No. d.) increased the amount in dispute beyond EUR 100,000.00.

111. With respect to the Claimant's legal fees, under the circumstances of the present proceedings, with a relatively complex briefing phase provoked, *inter alia*, by the Respondent's unwillingness to disclose the Maccabi Contract (with his confidentiality defense being unsubstantiated in light of the fact that the contract was determined to be used only in this BAT proceeding), the Arbitrator finds the amount of the legal fees requested by the Claimant to be appropriate. For the same reasons as above, the Respondent shall reimburse 88% of the Claimant's legal fees, i.e. 88% of EUR 7,500.00 which is EUR 6,600. In addition, the Respondent shall reimburse 100% of the non-reimbursable handling fee (EUR 4,000), because the NRF would have been incurred even in case of a slightly lower claim. Accordingly, the total contribution towards Claimant's fees and expenses is EUR 10,600.00.

112. The Respondent shall bear its own legal fees and expenses.

10. Award

For the reasons set forth above, the Arbitrator decides as follows:

1. **Mr. Joshua Nebo is ordered to pay Mr. Haris Papadopoulos an amount of USD 80,000.00 in agent fee compensation, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 28 June 2022 until complete payment.**

2. **Mr. Joshua Nebo is ordered to pay Mr. Haris Papadopoulos EUR 7,832.00 as a reimbursement for the arbitration costs.**

3. **Mr. Joshua Nebo is ordered to pay Mr. Haris Papadopoulos EUR 10,600.00 as a contribution towards his legal fees and expenses (including the non-reimbursable handling fee).**

4. **Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 14 March 2024

Annett Rombach

(Arbitrator)