ARBITRAL AWARD

(BAT 1853/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

BeoBasket Limited,
Strahinjica bana 18, 11000 Belgrade, Serbia

- Claimant -

represented by Mr. Miodrag Raznatovic, attorney at law,

vs.

Mr. Marco Shyderrick Knight,

- Respondent -

represented by Mr. Alessandro Mosca, Mr. Juan de Dios Crespo Pérez, attorneys at law,

1. The Parties

1.1 The Claimant

1. BeoBasket Limited (the "**Agency**" or "**Claimant**") is a basketball agency with its registered seat in Belgrade, Serbia.

1.2 The Respondent

2. Mr. Marco Shyderrick Knight (the "**Player**" or "**Respondent**") is a professional basketball player of US nationality.

2. The Arbitrator

3. On 10 October 2022, 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 summarized below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.

5. On 30 October 2018, the Agency (represented by FIBA agents Mr. Miodrag Raznatovic and Mr. Dragan Jankovsi) and the Player entered into a representation agreement (the "**Representation Agreement**").

6. The Agency's exclusive mandate in respect of the Player's representation in the basketball market was described as follows (Clause 1 of the Representation Agreement):

> *"The REPRESENTATIVE shall represent, advise, counsel and assist the PLAYER in making introductions on behalf of the PLAYER with basketball teams for the PLAYER's services and/or in the negotiation and execution of any and all PLAYER contracts for the PLAYER'S services as a basketball player in all leagues excluding National Basketball Association. REPRESENTATIVE shall continue to represent, advise, counsel and assist the PLAYER in any and all dealing with the PLAYER's basketball team relating to his PLAYER contract during the term of such PLAYER contract. The REPRESENTATIVE shall be PLAYER's sole and exclusive representative."*

7. Clause 2 set forth the term of the Representation Agreement, including the Player's right to terminate the contract within a certain time window:

> *"This Agreement shall begin on the date hereof and will lapse 2 (two) years thereafter or when the engagement contract negotiated by REPRESENTATIVE with basketball club on the PLAYER's behalf expires, whichever period is longer. This agreement shall thereafter be deemed automatically renewed for subsequent periods of 2 (two) years each time, unless written termination notice is given by either Party to the other within the last 30 (thirty) days prior to the natural expiry date of the agreement ("the Window Period"). Such non-renewal communication will have to be sent only via registered post service with return receipt to be addressed exclusively to the domicile respectively elected by the Parties above. Failure by either Party to fully and timely comply with the above requirements will result in the non-renewal notice not being valid and enforceable against the other Party except for what stipulated here bellow* [sic]. *Should PLAYER in any manner notify REPRESENTATIVE outside the Window Period that he does not intend to renew this Agreement upon expiry, then REPRESENTATIVE will be entitled to immediately collect from PLAYER a penalty fee equal to the commission earned for the last engagement contract negotiated by REPRESENTATIVE on PLAYER's behalf. This shall not exclude potential compensation for further and/or higher damages suffered by the Agent, especially compensation described in paragraph 3 bellow* [sic]*."*

8. Clause 3 of the Representation Agreement provides for the following:

> *"If the PLAYER enters into a contract in any professional league, as is the customary practice, REPRESENTATIVE shall be compensated for services rendered by payment directly from the professional basketball club an amount equal to 10 percents* [sic] *of the total compensation payable (agreed) to the Player. The PLAYER expressly acknowledges and accepts that pending this Agreement, the REPRESENTATIVE shall be the sole and only person and/or entity entitled to act in the name of and on behalf of the PLAYER in connection with the provision of any of the representation services listed under paragraph 1 above. Should nevertheless PLAYER, directly or through the service of any other*

person/entity other than REPRESENTATIVE, enter into or even, simply negotiate any engagement deal any basketball club pending this agreement, then REPRESENTATIVE shall be entitled to claim his commission fee from the PLAYER over any such deal. Such fee will fall due and immediately payable upon simple written request by the REPRESENTATIVE to the PLAYER."

9. In the summer of 2020, the Agency procured an employment contract between the Player and the French club AS Monaco for the 2020-21 season (the "**2020 Monaco Contract**"). The Player's salary was to range between USD 250,000.00 and USD 300,000.00. The 2020 Monaco Contract ended in the summer of 2021.

10. On 22 September 2021, the Player sent the following e-mail to the Agency (the "**Termination Letter**"):

"[…]

This letter shall constitute my termination of our Player Representation Agreement. In Addition, this letter shall constitute my termination of any other contracts you and I have entered into.

Additionally, please immediately cease from conduction of any conversations with any third parties, including EuroLeague, and any professional basketball clubs regarding myself.

Thank you for all your time and efforts. I truly appreciate everything you have done for me.

[…]*"*

11. On 23 September 2021, the Agency rejected the Player's termination as follows:

"[…]

We cannot accept your termination. We have representation agreement with you, which is in full force and effect, legally valid at least until 29th of October 2022. Therefore, your unilateral termination is not possible and we cannot accept it.

[…]"

12. On 10 and 11 November 2021, the representatives of the Agency and the Player had a WhatsApp conversation which reads (in relevant part and chronological order) as follows:

Agent: *"The other agent called Misko now, to work together.*

Misko told him not possible"

"Just FYI"

Player: *"Ok Told him I was still under contract with you..."*

Agent: *"Okay. Strange that he made that call anyways"*

Player: *"Yes because he came to me and said that he an offer from Avsel, and other teams maybe I just wanna do things the right now on my end but I do have to go play and make money"*

Agent: *"We spoke to* [Former Professional Player] *two days ago"*

"He sounds very confused and doesnt really know what he is talking about to be honest"

"All good"

"We have Fuenlabrada in ACB"

"Will call you in a bit"

"We are super close to [Former Professional Player] *and Asvel for year, having many many players.*

"Please stop talking to [Agent from another Agency], *because he only creates big confusion.*

"_____ stop talking to [Former Professional Player] *and GM on Monday about you. We should complete this deal."*

"_____ asked more money. [Agent from another Agency], *sneaked in for less money for you"*

"Again confusion"

*"*for years"*

"Now even if deal is same, we have to do it"

Player: *"Calling u back n 20mins D"*

Agent: *"Marcos this is a complete mess. You should stop this mess, tell* [Agent from another Agency] *to stop talking on your behalf as he is only damaging, like I told you before. If any deal, including Asvel deal is finished with him, while we have valid representation agreement it would make people in our agency again angry, with a reason"*

"Please do"

"Ok"

"You already signed"

"Thats [sic] terrible Marcos"

Player: *"No"*

[…]

Player: *"Dragan anyway I told* [Agent from another Agency] *that you will get 10% n Beo will be agent on the deal!"*

Agent: *"Its not about that"*

"At all"

"Its about us talking to them first and offering for 30k usd per month, while him sneaking in and offering for 20k, lowballinf [sic] you to jump in. But the main reason is because you gave him a green light to do that"

"Anyhow"

"We solved the situation"

"Send me those two contracts asap"

[…]

Agent: *"Ok. I will be with ASVEL in hotel. But lets try"*

"And now third agent, called the club to say he represents you. I guess [Agent from another Agency] *reached out to him, because* [Agent from another Agency] *doesnt hold French agent licence, which is a must in order to sign a deal in France. Pffff."*

"Very bad service"

Player: *"Yes I called back"*

"I'm ready to get this all handled [sic] I'm getting ready to get on the flight"

"Either way the 10% is yours"

"Ok but where's the contact for the offer"

Agent: *"Just finishes the meeting here"*

"Ok"

"We will finish the contract"

"It is not about percentage"

"Its about doing things the right way and keep working on what we together have building for 5-6 years"

Player: *"Contracts are signed and finished not sure what you mean by this"*

Agent: *"But didnt you tell me that you didnt sign the contract yet? Only the offer*

Player: *"I just want to be signed and play, I can't wait another second on things"*

Agent: *"Wort case scenario and only because you did this entire thing wrong Marcos and created this mess. I told you on Monday that we will push Asvel for you and we did that, then you still allowed this other guy to talk in your name and lowball you."*

"What to tell you but good luck.

"Everyone are extremely pissed off and I was very afraid of this situation, because this case will end on BAT with big expenses for you, agent fee, damages, legal fees, arbitration costs, lot of money. I tried t help you understand, but didnt work."

"Maybe the only way is to text [French Coach] *and* [Former Professional Player] *that BeoBasket is your agent to maybe solve this But I think its too late. Try. If you want, I will send you their numbers."*

Player: *"That's fine ill speak with whomever I need to, don't understand how someone I've worked with for some years talk very bad about me all because of a misunderstanding of things that was out of my control,"*

"I'm very pissed that ppl were saying that I'm unprofessional, I will change ppl many times, that I don't kno what I want to do etc when I've worked my tail off and still do!"

"It doesn't make any sense to me honestly"

"U can send numbers if u want"

"My good friend put us in contact and said it would be a good move! I'm not gonna ruin [Good Friend of Player] *and I good relationship that we will always have he knows me better than alot of ppl and how I am defeinitely not unprofessional*

Agent: *"Contact of* [Former Professional Player]*"*

"Contact of [French Coach]*"*

"Just send them messages that you are exclusively represented by BeoBasket"

"I hope its not too late and I hope it will work"

[…]

Player: *"Ok I seen the messages I just got off a flight however I'm meeting with* [Former Professional Player] *on tomorrow about everything"*

"If it's to late then what's the biggest use"

Agent: *"Ok"*

13. On 12 November 2021, the French basketball club LDLC ASVEL published on its official website the Player's engagement for a three-months employment including the option to extend the employment contract for the remainder of the 2021-22 season (the "**ASVEL Contract**"). That option was later exercised, which extended the contractual period of the ASVEL Contract to a total period of 9 months. The Player's monthly salary under the ASVEL Contract amounted to USD 20,000.00 net.

14. On 19 November 2021, the Agency's counsel sent an e-mail to the Player requesting the payment of an agency fee in the amount of 10% of the value of the initial three-months employment under the ASVEL Contract, i.e. USD 6,000.00 net.

15. On 29 November 2021, the Player replied that *"*[t]*he* [money] *transfer will be made today latest but tomorrow."*

16. On 3 December 2021, the Agency's counsel sent an e-mail to the Player stating that no agency fee payment had been received. He requested a bank confirmation for the alleged money transfer.

17. On 13 December 2021, the Agency sent a warning e-mail to the Player requesting the payment of its agency fee in the amount of USD 6,000.00 net within two (2) days.

18. On 3 February 2022, LDLC ASVEL announced on its website the extension of the ASVEL Contract for an additional six months, until the end of the 2021-22 season.

19. On 7 February 2022, in light of the extension of the ASVEL Contract, the Agency's counsel, via e-mail, requested from the Player the payment of agency fees in the amount of 10% of the total value of the ASVEL Contract, i.e. USD 18,000.00 net, by no later than 15 February 2022.

20. On 12 February 2022, the Player replied that he transferred an agency fee in the amount of EUR 4,800.00 (approx. USD 5,450.00) to the Agency.

21. By e-mail of 23 February 2022, the Agency's counsel requested from the Player the payment of the remainder of the agency fee in the amount of USD 12,550.00 by no later than 28 February 2022.

22. On 14 March 2022, the Player informed the Agency that he would forward the agency fee to the Agency as soon as LDLC ASVEL paid the amount to him.

23. On 15 April 2022 and 21 July 2022, the Agency, through its counsel, reiterated its payment request towards the Player.

24. On 27 July 2022, the Player entered into an employment agreement with the Russian Club BC Samara (the "**Samara Contract**"). His total annual salary for the 2022-23 season was agreed at USD 350,000.000 (net). On the following day, BC Samara published on its official website the Player's engagement for the 2022-23 season.

25. By e-mail of 29 July 2022, the Agency, through its counsel, requested the Player to pay an agency fee for the execution of the Samara Contract, on the basis that the Player entered into this employment without the Agency's participation. It further requested disclosure of the Samara Contract by no later than 3 August 2022. The requests remained unanswered.

3.2 The Proceedings before the BAT

26. On 12 September 2022, 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 was received in the BAT bank account on 13 September 2022.

27. On 11 October 2022, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited the Respondent to file its Answer in accordance with Article 11.4 of the BAT Rules by no later than 2 November 2022 (the "**Answer**"), and fixed the amount of the Advance on Costs to be paid by the Parties by 21 October 2022 as follows:

"Claimant (BeoBasket Ltd.)	*EUR 4,000.00*
Respondent (Mr. Marco Shyderrick Knight)	*EUR 4,000.00"*

28. On 3 November 2022, BAT acknowledged receipt of Claimant's share of the Advance on Costs and noted Respondent's failure to pay his share and to submit his Answer. Consequently, the Respondent was given a final opportunity until 10 November 2022 to pay his share of the Advance on Costs and to file his Answer. The BAT informed the Respondent that, in accordance with Article 14.2 of the BAT Rules, if the Respondent fails to submit an Answer, the Arbitrator may nevertheless proceed with the arbitration and deliver an award.

29. On 15 November 2022, the BAT noted Respondent's failure to pay his share and to submit his Answer. Considering this and in accordance with Art. 9.3.1 of the BAT Rules, the BAT informed the Parties that it had decided to adjust the Advance on Costs as follows:

"Claimant (BeoBasket Limited)	*EUR 3,500.00*
Respondent (Mr. Marco Shyderrick Knight)	*EUR 3,500.00"*

30. In accordance with Article 9.3.2 of the BAT Rules, Claimant was invited to substitute for Respondent's (yet unpaid) share of the (adjusted) Advance on Costs by no later than 22 November 2022 in order to ensure that the arbitration could proceed.

31. On 3 December 2022, the Respondent, via e-mail, informed the BAT that he had not received BAT's previous correspondence, and requested an extension of the time-limit to file his Answer.

32. On 5 December 2022, the Arbitrator granted the requested extension. The Respondent was invited to file his Answer by no later than 15 December 2022.

33. On 15 December 2022, the Respondent filed his Answer, in which he requested that the Samara Contract (Annex 3 of the Answer) not be disclosed to the Claimant due to its confidential nature.

34. On 5 January 2023, the BAT acknowledged receipt of the Respondent's Answer and of the full amount of the Advance on Costs paid by the Claimant. The Claimant was invited to comment on the Answer by no later than 25 January 2023 ("**Reply**"). Moreover, the BAT informed the Parties that the Arbitrator had decided to dismiss the Respondent's request not to disclose the Samara Contract to the Claimant, and that she would provide the reasons for that decision in the arbitral award (see para. 52 below).

35. On 23 January 2023, the BAT acknowledged receipt of the Claimant's Reply and invited the Respondent to file comments by no later than 13 February 2023 ("**Rejoinder**").

36. On 13 February 2023, the Respondent filed its Rejoinder.

37. On 28 February 2023, the BAT acknowledged receipt of Respondent's Rejoinder. In the same procedural order, 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 7 March 2023.

38. The Claimant submitted its cost account on 1 March 2023. The Respondent submitted its cost account on 7 March 2023.

39. 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 Claimant's Position and Request for Relief

40. The Claimant submits the following in substance:

- The Claimant is entitled to receive an agency fee in the amount of USD 12,550.00 in respect of the Respondent's signing and prolongation of the ASVEL Contract. This is the remaining agency fee due after deduction of the partial payment of USD 5,450.00 made by the Respondent in February 2022.
- The Claimant is also entitled to receive an agency fee in the amount of USD 35,000.00 for the Player's signing of the Samara Contract (equalling 10% of the total salary in the amount of USD 350,000.00).
- The Representation Agreement, which initially ran until 29 October 2020, was automatically renewed for another two years until 29 October 2022 because the Termination Letter was not delivered within the contractual window period. It also did not meet the formal requirements for a non-renewal notice set out in Clause 2 of the Representation Agreement.
- The untimely termination notice constitutes a breach of contract, which entitles the Agency to an additional penalty payment according to Clause 2 of the Representation Agreement. The amount of the penalty equals the amount of the agency fee earned by the Agency for the last contract it procured on behalf of the Player, which was the 2020 Monaco Contract.
- The Representation Agreement was still in force when the Player entered into the ASVEL Contract and the Samara Contract without using the Claimant's services.

- The Termination Letter cannot be considered as a termination with just cause and was never accepted as such by the Claimant.
- The Parties freely entered into the Representation Agreement and must stick to their bargain (*pacta sunt servanda)*. The Respondent is a senior professional who had the free choice to obtain whatever professional assistance he deemed necessary, or to go without such support. Therefore, he cannot claim that he was unaware of the meaning of Clause 2 of the Representation Agreement.
- The FIBA Internal Regulations ("**FIBA IR**") are irrelevant for the present dispute. It is not true that the relationship between the Parties became distressed because of alleged violations of FIBA IR. The Player seriously breached the terms of the Representation Agreement.
- The Claimant had been very actively working for the Respondent until the Respondent requested the Claimant to immediately cease the provision of any further services. The Claimant was thereby deprived of any opportunity to mitigate damages.
- The agency fee for the Respondent's execution of the Samara Contract shall not be limited *pro rata temporis*, on the basis of the expiry of the Representation Contract (on 29 October 2022) before the expiry of the Samara Contract. The agency fee is a finder's fee based in the procurement of an employment contract. Therefore, the Respondent's *pro rata* approach until 29 October 2022 is not convincing.
- Although the authenticity of the Samara Contract seems doubtful, the Claimant accepts the numbers therein, including the total annual salary of USD 350,000.00 as the basis for its calculation of the agency fee.

41. With the Request for Arbitration dated 12 September 2022, the Claimant initially requested the following relief:

"a) To award the Claimant with amount of 12.550 USD net (twelve thousand five hundred

fifty US Dollars) as agent fee for basketball season 2021/22, for the Respondent's contract with LDLC Asvel and additionally to award Claimant's interest at the applicable Swiss statutory rate, starting from 1st of March 2022, which equals to 314 USD (three hundred fourteen US Dollars), at the time the present Request for BAT Arbitration was filed.

b) To award the Claimant with amount of 60.000 USD net (sixty thousand US Dollars) for the agent fee for basketball season 2022/23 for the Respondent's contract with BC Samara and additionally to award claimant's interest at the applicable Swiss statutory rate, starting from 4th of August 2022, which equals to 250 USD (two hundred fifty US Dollars), at the time the present Request for BAT Arbitration was filed.

c) To award claimants [sic] *with the full covered costs of this Arbitration and Legal fees and expenses. Having in mind that in case of dispute the Player Representation Agreement set the authority of Basketball Arbitration Tribunal (BAT), therefore, the claimant demand arbitrage of BAT."*

42. In its Reply dated 23 January 2023, the Claimant updated its request for relief as follows:

"a) To award Claimant with the amount of 25.000 USD (twenty five thousand US Dollars) for the Penalty fee for the improper contract termination in accordance with Article II (Term) of the Player Representation Agreement and additionally to award claimant's interest at the applicable Swiss statutory rate from the date of issued BAT Award.

b) To award the Claimant with the amount of 12.550 USD net (twelve thousand five hundred fifty US Dollars) as agent fee for basketball season 2021/22, for the Respondent's contract with LDLC Asvel and additionally to award Claimant's interest at the applicable Swiss statutory rate, starting from 1st of March 2022.

c) To award the Claimant with amount of 35.000 USD net (thirty five thousand US Dollars) for the agent fee for the basketball season 2022/23 for the Respondent's contract with Russian team BC Samara and additionally to award claimant's interest at the applicable Swiss statutory rate, starting from 4th of August 2022.

d) To award Claimant with the full covered costs of this Arbitration which is 11.000 EUR (eleven thousand Euro) for Handling fee and Advance on Costs.

e) To award Claimant with the full covered costs of Legal fees and expenses which is 7.500 EUR (seven thousand five hundred Euro)."

4.2 Respondent's Position and Request for Relief

43. The Respondent submits the following in substance:

- The Claimant tries to receive an unjustifiably high amount of compensation in this arbitration. The Claimant is only entitled to remaining compensation in the

amount of USD 12,550.00 for the Player's signing of the ASVEL Contract.

- The Claimant is not entitled to receive any agency fee for the Player's signing of the Samara Contract. The Player had duly terminated the Representation Agreement, which was – as a result – no longer effective when the Player joined Samara, while the Representation Agreement (Clause 3) requires a "pending" contract. The Samara Contract was not signed "pending" the Representation Agreement, but only after the latter's termination.
- The automatic renewal-mechanism in Clause 2 of the Representation Agreement violates Article 3-320 of the FIBA IR. When the Player realized that the Representation Contract violates the FIBA IR, the Parties' relationship inevitably became distressed and the Player lost his trust in the Agency and its representatives. This is why he terminated the Representation Agreement.
- The Player was not aware about the automatic renewal-mechanism included in Clause 2 of the Representation Agreement, because the very first representation agreement signed between the Parties in 2016 did not include such automatic renewal clause. The Agency acted maliciously when it later included the said clause.
- The Player was not satisfied with the Agency's performance.
- The Player's termination was lawful. Under contract law, a player has the right to freely choose his representative at any time, and such right cannot be limited. The Player's termination of the Representation Agreement, of which the Agency acknowledged receipt, was duly notified.
- The Agency cannot argue that the Representation Agreement was still in force following the Player's Termination Notice, because the Agency has not rendered any further services to the Player. To the opposite, the Agency decided to "*sit and wait*" for the Player to find a new employment without its support, and to claim a fee despite its own inactivity.

- The Player's duty to pay the Agency a remuneration ends with the expiry of the Representation Agreement (which occurred, at the very latest, on 29 October 2022). Therefore, even if one assumed the Agency was to receive any agency fee for the Player's signing of the Samara Contract *(quod non*), the Player should pay compensation based on the Respondent's *pro rata* salary until 29 October 2022, which equals USD 8,467.74;
- Even if the Player's termination of the Representation Agreement was void, the Agency cannot claim damages compensation and a penalty at the same time. It is either one or the other, as confirmed in previous BAT jurisprudence.
- Finally, the Agency failed to comply with its duty to mitigate damages. The Agency completely failed to perform any activity whatsoever to reduce the claimed damages in the amount of USD 60,000.00.

44. The Respondent requests the following relief:

"a. To partially accept the claim filed by the Claimant, condemning the Respondent to pay the Claimant USD 12,550.00 USD, as contractually agreed compensation

Subsidiarily, in case the Arbitrator decided that the Respondent shall pay additional compensation based on the Player's employment contract with the Russian basketball club Samara contract

b. to partially accept the claim filed by the Claimant, condemning the Respondent to pay the Claimant USD 21,017.7411, as contractually agreed compensation, or

Subsidiarily

c. to partially accept the claim filed by the Claimant, condemning the Respondent to pay the Claimant USD 47,550.0012, as contractually agreed compensation.

In any case

d. Further to article 17.3 of the BAT Arbitration Rules to decide that the Claimant shall bear the entirety of the costs of this arbitration

e. Further to article 17.4 of the BAT Arbitration Rules to decide that the Claimant shall pay the Respondent's legal fees with respect to this procedure in the total amount of EUR 7,500.00"

5. The Jurisdiction of the BAT

45. 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**").

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

47. 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.

48. The Representation Agreement (Clause IV) contains the following dispute resolution clause in favour of BAT:

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

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

50. 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 Player Contract in the recitals, and are thus bound by the arbitration clause *ratione personae*. In addition, the Respondent expressly accepted BAT's jurisdiction.

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

6. Other Procedural Issues

6.1 Dismissal of the Respondent's request not to disclose the Samara Contract

52. By Procedural Order dated 5 January 2023, the Arbitrator informed the Parties that the Respondent's request not to disclose the Samara Contract (which the Respondent had submitted to BAT, but argued should not be shown to the Claimant) was dismissed. The Respondent has failed to invoke any legitimate (confidentiality) interests justifying the non-disclosure of the Samara Contract vis-à-vis the Claimant. More specifically, the Respondent has not established any legal basis for its assertion that Samara Contract is *"strictly confidential"*. The Samara Contract does not include any confidentiality provision at all. The Respondent's reliance on Clause 7 of the Samara Contract, which provides that

> *"This agreement, or any of its inherent or implied considerations, cannot be assigned, sold, or transferred to any other international basketball club without the written approval of the PLAYER and the REPRESENTATIVE. The CLUB cannot resign, renew or extend this agreement without the written approval of the PLAYER and the REPRESENTATIVE."*

is ill-founded. Clause 7 only addresses the assignment, sale and transfer of the agreement, which requires the Player's and the Agency's consent. This clause does not prevent the disclosure of the contract in a legal proceeding. Even less does it justify that the contract is to be treated "*in camera*" by the Arbitrator, to the detriment of the Claimant, who undisputedly requires certain information in the contract (namely the amount of the Player's annual salary) for the quantification of its claims.

6.2 Admissibility of the Agency's amended Request for Relief

53. In its Reply, the Claimant introduced the following changes to its request for relief, while the quantum of the claimed amounts remained the same:

- It reduced the amount sought for the Respondent's signing of the Samara Contract from USD 60,000.00 to USD 35,000.00 (as a result of the disclosure of the Samara Contract, which revealed the Respondent's salary thereunder);

- It newly introduced a claim for the payment of a contractual penalty in the amount of USD 25,000.00 on the basis of an alleged breach of the Representation Agreement.

54. According to Article 12.1 of the BAT Rules, after the submission of the Request for Arbitration and Answer, it is for the Arbitrator to determine, in her discretion, the further proceedings, in particularly the necessity to have a further round of briefings. In order to preserve the efficiency of BAT arbitrations, changes to a party's request for relief shall only be permitted restrictively, e.g. when the Arbitrator is satisfied that the change will not result in a delay of the proceedings, or when the change is the subject of a particular development of the proceedings unknown to the party at the time of its filing of the request for arbitration. In the present case, the reduction of the payment claim was warranted by the disclosure of the Samara Contract by the Respondent (and the fact that the Respondent's salary revealed therein was lower than expected by the Claimant). The introduction of the penalty claim was not warranted by any particular procedural circumstances. The Claimant could have well introduced such claim already with its Request for Arbitration. However, the penalty payment claim rests on the identical facts on which the other payment claims are based, i.e. the Respondent's improper termination of the Representation Agreement. The Respondent had the chance to reply to this new legal claim in his Rejoinder, which means that the new claim did not cause any delayal to the proceedings. In addition, the Respondent did not object to the introduction of this new claim.

55. Therefore, the Arbitrator deems the Claimant's new request for relief admissible under the circumstances at hand.

7. Applicable Law – ex aequo et bono

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

57. 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."*

58. In the arbitration agreement quoted above at para. 49, 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*.

59. 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

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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.

which Swiss courts have held that arbitration "en équité" is fundamentally different from 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]

60. 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*".

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

8. Findings

62. The Claimant pursues two categories of claims:

- A claim for the payment of agency fees under the Representation Agreement (below at **8.1**), and
- A claim for the payment of a penalty for breach of contract (below at **8.2**).

8.1 Claim for the payment of agency fees

63. The Agency claims that it is entitled to receive a 10% commission for the Player's signing, respectively, of the ASVEL Contract (EUR 12,500.00) and the Samara Contract (EUR 35,000).

64. The factual basis of these claims is principally undisputed. In particular, it is undisputed

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

that:

- The Parties signed the Representation Agreement on 30 October 2018;
- The initial term of the Representation Agreement ran until 29 October 2020;
- The Player sent a notice to terminate the Representation Agreement on 22 September 2021;
- The Agency rejected the termination;
- The Player signed the ASVEL Contract in November 2021, without using the Agency's services;
- The Player signed the Samara Contract on 27 July 2022, without using the Agency's services.

65. What is in dispute between the Parties is the legal consequences these events have triggered. In particular, it is disputed whether the Player's Termination Letter resulted in the (immediate or ordinary) termination of the Representation Agreement, and whether such termination affects the claimed agency fees. Hence, the Arbitrator will address, in turn, the following questions.

- Is the Player's termination substantively valid, and what are its effects (below at **8.1.1)**?
- Is the Player's notice formally valid, despite the fact that the Termination Letter was only sent by e-mail and outside the window period (below at **8.1.2)**?
- What effects does the termination have for the claimed agency fees (below at **8.1.3)**?

8.1.1 Is the Player's termination materially valid, and with what effect?

66. The first question relates to the interpretation of the Player's Termination Letter, which

reads as follows:

> *"*[…]
>
> *This letter shall constitute my termination of our Player Representation Agreement. In Addition, this letter shall constitute my termination of any other contracts you and I have entered into.*
>
> *Additionally, please immediately cease from conduction of any conversations with any third parties, including EuroLeague, and any professional basketball clubs regarding myself.*
>
> *Thank you for all your time and efforts. I truly appreciate everything you have done for me.*
>
> […]*"*

67. Pursuant to the language of this letter (*"please immediately cease from conduction of any conversations with any third parties"*), it appears that the Player sought to terminate the Representation Agreement with immediate effect. However, such termination with immediate effect requires just cause, and the Player did not provide any grounds for just cause in the Termination Letter. He did not express any dissatisfaction with the Agency's services at the time. To the contrary, the Player emphasized in the Termination Letter that he "*truly appreciate*[s] *everything you have done for me*". Therefore, the Arbitrator considers that the Player's complaints raised for the first time in these proceedings, regarding the alleged violation of the FIBA Internal Regulations and the Agency's improper performance, are *post hoc* allegations made for the purpose of improving his position in this legal dispute. In truth, there is no proof that any circumstances existed at the time which would have justified an immediate termination, and the Player has also not provided any evidence for his allegations. The Representation Agreement also makes it clear that the Player was not entitled to terminate the agreement at any time without cause. While certain jurisdictions may have legal rules allowing the immediate termination of agency agreements at any time, this is not applicable to BAT proceedings, in which cases are decided *ex aequo et bono* without regard to any particular legal system. The Arbitrator accepts that an agency has a justified interest in contractual stability and predictability, given that it makes investments into its players that may need some time to amortize. A contractual term

of two years is not overly long and does not unjustly impede a player's freedom of choice of his or her agent.

68. In the Respondent's view, the Representation Agreement was *de facto* terminated even if there was no just cause for an immediate termination. While the Arbitrator is aware that there are cases in which an (illicit) termination results in a factual termination of the contract (especially in player-club relationships), this is not a scenario permitting such a conclusion. The correspondence following the Termination Letter clearly demonstrates that the Agency insisted strongly on the effectiveness of the Representation Agreement, and even continued to offer its services to the Player. The Agency immediately rejected the Termination Letter ("*We cannot accept your termination. We have representation agreement with you, which is in full force and effect, legally valid at least until 29th of October 2022*", see above at para. 11). In a WhatsApp conversation seven weeks later (see above at para. 12), the Agency even offered further services to the Player („*We have Fuenlabrada in ACB*") and insisted that the Player stops talking to other agents ("*Please stop taking to* [Agent from another Agency]"). The Agency also insisted again that there was a valid contractual relationship ("*we have a valid representation agreement*") and asked the Player to make this clear to other representatives ("*the only way is to text* [French Coach] *and* [Former Professional Player] *that Beobasket is your agent*"). The Player did not object and did not sent any other termination notices. In March 2022, almost 6 months after the Player's Termination Notice, and after the Player had extended the ASVEL Contract in February 2022, he confirmed to the Agency that he would pay the agency fee relating to the extension of the contract as soon as he received money from ASVEL (see above at para. 22). Under these circumstances, there is no room for the Respondent's interpretation of the Termination Notice resulting in a *de facto* termination of the Representation Agreement.

69. Because the Player rejected to accept any further services from the Agency, it is wrong to argue that the Agency just "*sat and wait*" to cash in the agency fee. Rejecting the

Agency's services was the Player's own risk after he had attempted to terminate a contract that he could not terminate but before the end of the contractual period. Any different conclusion would equip players with the power to force upon agencies a unilateral termination when it is clear that the contract provides otherwise. It would also severely affect the principle of *pacta sunt servanda*.

70. As a result, the Arbitrator finds that the Player's Termination Letter did not result in a (*de facto*) termination of the Representation Agreement. Rather, it must be interpreted to constitute a non-renewal notice. Pursuant to Clause 2 of the Representation Agreement, a non-renewal notice does not have retroactive effect, but can only be given for the future. This means that the Agency Agreement, which the Player did not terminate during the initial 2-year term, and which had therefore extended until 30 October 2022 (i.e. for another two years) expired, at the earliest, on 29 October 2022.

71. The Player's submission that he was not aware of the automatic renewal mechanism in Clause 2 of the Representation Agreement is unconvincing and irrelevant. Automatic renewal mechanisms are common in basketball representation agreements, and players should be aware of them. Clause 2 of the Representation Agreement is neither hidden nor unclear. If the Player has not read the clause, such negligence is no excuse and certainly does not deprive the clause of its legal effects. The Respondent's reference to the incompatibility of the clause with the FIBA Internal Regulations (more specifically Article 3-320) is also without merit. According to constant BAT jurisprudence (see, e.g. BAT 541/14 and BAT 1231/18), non-compliance of a contractual provision with the FIBA Internal Regulations does not lead to the invalidity of that contractual provision, but, if at all, to regulatory sanctions, which is, however, not a matter of the Arbitrator's mandate or jurisdiction.

72. In conclusion, the Arbitrator finds that the Termination Letter does not constitute an immediate just cause termination, but provides a non-renewal notice to become

effective at the next possible date, on 29 October 2022.

8.1.2 Is the Player's non-renewal notice formally valid?

73. Clause 2 of the Representation Agreement provides that the non-renewal notice must be delivered to the agency "*via registered post service with return receipt"*, and within a "window period" of 30 (thirty) days prior to the *"natural expiry date of the agreement"*, which was 29 October 2022 (after the Agreement had been automatically renewed twice). The relevant "window period" therefore began on 29 September 2022 (30 days prior to the expiry date) and ended on 29 October 2022. The Player's Termination Letter was, undisputedly, sent before the beginning of the window period.

74. The consequences of a non-renewal notice outside of the window period are described in Clause 2 of the Representation Agreement as follows:

> *"Failure by either Party to fully and timely comply with the above requirements will result in the non-renewal notice not being valid and enforceable against the other Party except for what stipulated here bellow [sic]. Should PLAYER in any manner notify REPRESENTATIVE outside the Window Period that he does not intend to renew this Agreement upon expiry, then REPRESENTATIVE will be entitled to immediately collect from PLAYER a penalty fee equal to the commission earned for the last engagement contract negotiated by REPRESENTATIVE on PLAYER's behalf. This shall not exclude potential compensation for further and/or higher damages suffered by the Agent, especially compensation described in paragraph 3 bellow [sic]."*

75. The first sentence demonstrates that the non-renewal notice is to be deemed invalid if it is sent outside the window period, irrespective of whether it is sent too early or too late. This consequence results in the Player being punished for notifying the Agency of the non-renewal too early (see also BAT 341/12). While it is understandable that a non-renewal notice must not be sent or received too late because the Agency must know in good time prior to the expiration of the agreement whether or not the Player has exercised the extension (or non-renewal) option, the Agency has not presented a valid explanation as to why a non-renewal notice sent prior to the window period may be disadvantageous to it. Indeed, there is no such explanation. To the contrary, it appears

that the window period, which excludes the Player's possibility to express his intent to not renew the Representation Agreement before the beginning of such period, has the only purpose to make it more burdensome for the Player to prevent the automatic renewal of the agreement. Clause 2 of the Representation Agreement is unbalanced and disadvantageous only to the Player; it overly restricts the Player's right to terminate the Representation Agreement. The effect of such a clause is that it violates the Player's basic personal rights and, consequently, should not be enforced. Therefore, and in accordance with established BAT jurisprudence (e.g. BAT 341/12, paras. 60 ff.), the Arbitrator (deciding *ex aequo et bono*) finds that she is not bound by the contractually prescribed invalidity of a termination notice that was sent too early. Rather, the termination notice shall be considered valid, given that it does not result in any harm for the Agency.

76. Similarly, the non-renewal notice is not invalid on the basis that it did not comply with the form of delivery prescribed in Clause 2 ("*via registered post service with return receipt*") or Clause 5 of the Representation Agreement. It is undisputed that the Agency received the non-renewal notice, in light of the fact that it promptly rejected the Termination Letter only one day after it had been sent by the Player (see above at para. 11). Any formal deficiency was thereby healed, because the central purpose of form requirements is to evidence receipt by the other party. If it is clear that a message was received, the purpose of the form requirement is met, and it would be a pure formalism to insist on any stricter form requirements.

77. As a result of the above, the Arbitrator finds that the non-renewal notice is formally valid. The Representation Agreement ended on 29 October 2022.

8.1.3 What effects does the non-renewal have for the claimed agency fees?

78. The Player's valid non-renewal notice resulted in the termination of the Representation Agreement effective 29 October 2022. This means that the Parties were principally

bound by the rights and obligations under the Representation Agreement until that date. This also means that the Player was still obliged to observe the exclusivity undertaking in Clause 3 of the Representation Agreement:

> *"*[…] *The PLAYER expressly acknowledges and accepts that* ***pending this Agreement, the REPRESENTATIVE shall be the sole and only person and/or entity entitled to act in the name of and on behalf of the PLAYER*** […]*"*

79. It is undisputed that the Player did not use the Agency's services when he signed the ASVEL Contract (in November 2021) and the Samara Contract (in February 2022) before the termination of the Representation Agreement. Therefore, the Player's signing of these contracts (including the extension of the ASVEL Contract) to the exclusion of the Agency constitutes a breach of the exclusivity clause, which happened "pending" the Representation Agreement.

80. The consequences of such breach are described in Clause 3 of the Representation Agreement as follows:

> *"*[…] *Should nevertheless PLAYER, directly or through the service of any other person/entity other than REPRESENTATIVE, enter into or even, simply negotiate any engagement deal any basketball club pending this agreement, then REPRESENTATIVE shall be entitled to claim his commission fee from the PLAYER over any such deal. Such fee will fall due and immediately payable upon simple written request by the REPRESENTATIVE to the PLAYER."*

81. The commission fee to which the Agency is entitled is 10% of the total compensation payable by the relevant club to the Player (Clause 3 of the Representation Agreement).

82. The Player's total remuneration under the (extended) ASVEL Contract was USD 180,000.00 (net). The remuneration under the Samara Contract was USD 350,000.00 (net). The Claimant (while raising initial concerns about the authenticity of the Samara Contract) accepted those amounts as the basis for the calculation of his agency fees.

83. The Respondent accepts that the Claimant is entitled to receive 10% of his salary under the ASVEL Contract, i.e. EUR 18,000.00. In light of the fact that the Claimant has already made a partial payment of EUR 4,800.00 (approx. USD 5,450.00) on 12 February 2022, the remaining amount payable to the Agency for the Player's signing of the ASVEL Contract is USD 12,550.00 (net).

84. With regard to the Samara Contract, the Respondent argues that he does not owe the Claimant any fee, because the Agency failed to provide any services to the Player at the time. Alternatively, it is the Respondent's view that the agency fee should be limited *pro rata temporis* to include only the time period between the conclusion of the Samara Contract (February 2022) and the expiry of the Representation Agreement (29 October 2022).

85. Both arguments are dismissed.

86. First, the fact that the Agency no longer performed any services for the Player at the time of the signing of the Samara Contract does not extinguish the Agency's fee claim. It was the Player who expressly requested the Agency, in his Termination Letter, to *"please immediately cease from conduction of any conversations with any third parties".* Under the principle of *venire contra factum proprium*, the Player is barred from arguing that the Agency did not provide any services, when it was him who prevented such services to be offered.

87. Second, the Respondent's pro rata-calculation is also without merit. Pursuant to Clause 3 of the Representation Agreement, the commission fee is 10% of the "***total*** *compensation payable* […] *to the Player*", without this payment obligation being in any way linked to the duration of the Representation Agreement.

88. Therefore, the Agency is entitled to the requested amount of USD 35,000.00 (net) in outstanding agency fees for the Player's signing of the Samara Contract.

89. With regard to the tax nature of the requested agency fees, the Arbitrator notes that the Claimant requests net payments, which the Respondent has not disputed. While the Representation Agreement is silent on this issue, it refers to the "*compensation paid to the Player*". This compensation is a net compensation. Therefore, the Arbitrator finds that, absent any indication to the contrary in the Representation Agreement, the agency fees shall also be paid as net amounts.

8.2 Is the Agency entitled to a penalty?

90. In its Reply, the Agency introduced a request for the payment of a penalty in the amount of USD 25,000.00, which is the amount of the commission earned by the Claimant under the 2020 Monaco Contract. The request is based on the alleged improper termination of the Representation Agreement by the Player. Clause 2 of the Representation Agreement reads as follows:

> *"Should PLAYER in any manner notify REPRESENTATIVE outside the Window Period that he does not intend to renew this Agreement upon expiry, then REPRESENTATIVE will be entitled to immediately collect from PLAYER a penalty fee equal to the commission earned for the last engagement contract negotiated by REPRESENTATIVE on PLAYER's behalf."*

91. As explained above, the window period only serves to protect the agency inasmuch as such notice should not come too late, to protect the Agency's own planning. The Agency does not require protection against a non-renewal notice coming 'too early'. To the very contrary: The earlier a non-renewal notice is received, the more time the Agency has to arrange and plan for a future without the Player in its portfolio.

92. Therefore, coherent with the analysis regarding the validity of the non-renewal notice, the Arbitrator finds that the penalty clause shall not be enforceable absent any interference with a position of the Agency that is worthy of protection.

8.3 Interest

93. With regard to the outstanding agency fees, the Claimant requests interest *"at the applicable Swiss statutory rate"* per annum from 1 March 2022 (employment contract with LDLC ASVEL; USD 12,550.00) and from 4 August 2022 (employment contract with BC Samara; USD 35,000.00).

94. 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.

95. The requested starting dates for interest on the outstanding agency fees correspond to the day after the last day of the deadlines set in the Claimant's e-mails from 23 February 2022 and 29 July 2022. Pursuant to Clause 3 of the Termination Agreement, the outstanding agency fee shall be due upon simple written request by the Agency. The deadlines for payment set by the Agency in its respective notices were 28 February 2022 and 3 August 2022, respectively. Therefore, the Agency is entitled to default interest on the outstanding agency fees as from 1 March 2022 and 4 August 2022, respectively.

8.4 Summary

96. The Agency is entitled to the amount of USD 12,550.00 in outstanding agency fees for the Player's signing of the ASVEL Contract, plus interest of 5% p.a. on this amount as from 1 March 2022.

97. The Agency is further entitled to the amount of USD 35,000.00 in outstanding agency fees for the Player's signing of the Samara Contract, plus interest of 5% p.a. on this amount as from 4 August 2022.

9. Costs

98. 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).* […]*"*

99. On 19 June 2023, the Vice-President of the BAT determined the arbitration costs in the present matter to be EUR 7,000.00.

100. 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."*

101. Considering that the Claimant prevailed with its agency fee claims (in the amount of USD 47,550.00 in total), but lost with its penalty payment claim (in the amount of USD 25,000.00), it is consistent with the provisions of the BAT Rules that 67% of the costs of the arbitration, as well as 67% of the Claimant's reasonable fees and expenses, be borne by the Respondent. Claimant has to bear 33% of the arbitration costs and 33% of the Respondent's reasonable legal fees and expenses. Given that the Claimant has paid the entire amount of the advance on costs, the Respondent shall pay the Claimant EUR 4.690,00 as a reimbursement of the arbitration costs advanced by the latter.

102. 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."*

103. 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.

104. Both Parties claim reimbursement of lawyer's fees and expenses in the amount of EUR 7,500.00, respectively. This is the maximum amount available for each Party according to Article 17.4 of the BAT Rules. When determining the contribution to be awarded to the Claimant, the Arbitrator has to take into account, in accordance with constant BAT jurisprudence,[4] that its legal fees have been incurred by an internal counsel. In fact, Mr. Raznatovic is the Claimant's Chairman and CEO.[5] The reimbursement of internal costs is restricted under BAT jurisprudence. Hence, the Arbitrator, deciding *ex aequo et bono*, finds that the Claimant's contribution towards its (internal) fees and expenses shall be limited to the amount of EUR 2,000.00, to account for the fact that internal work is done at some cost. 67% of EUR 2,000 are EUR 1,340.00 which the Respondent shall pay to the Claimant as contribution to the latter's legal fees, together with 67% of the non-reimbursable handling fee, which is EUR 2,640.00. The

[4] See e.g., BAT 0460/13, also BAT 0744, 0685, 0688, 0637.

[5] See http://www.beobasket.net/about-us.html.

total contribution towards Claimant's fees and expenses is EUR 3,980.00.

105. With respect to the Respondent's legal fees, under the circumstances of the present proceedings, with two rounds of submissions, but no hearing, the Arbitrator finds the maximum costs of EUR 7,500.00 are excessive. Deciding *ex aequo et bono*, the Arbitrator finds that an appropriate contribution towards the Respondent's legal fees and expenses is EUR 5,000.00. Applying the above-referenced contribution scheme, Respondent shall be entitled to 33% of EUR 5,000.00, which is EUR 1,650.00.

10. Award

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

1. **Mr. Marco Shyderrick Knight is ordered to pay BeoBasket Limited an amount of USD 47,550.00 net in compensation for outstanding agency fees, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) until complete payment**

    - **from 1 March 2022 on the amount of USD 12,550.00;**
    - **from 4 August 2022 on the amount of USD 35,000.00.**

2. **Mr. Marco Shyderrick Knight is ordered to pay to BeoBasket Limited EUR 4,690.00 as reimbursement for the arbitration costs.**

3. **Mr. Marco Shyderrick Knight is ordered to pay to BeoBasket Limited EUR 3,980.00 as a contribution towards its legal fees and expenses.**

4. **BeoBasket Limited is ordered to pay Mr. Marco Shyderrick Knight EUR 1,650.00 as a contribution towards his legal fees and expenses.**

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

Geneva, seat of the arbitration, 27 June 2023

Annett Rombach

(Arbitrator)