ARBITRAL AWARD

(BAT 2249/24)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Benny Lo

in the arbitration proceedings between

Sigma Srl
Via Giuseppe Giacosa 3, 40132 Bologna, Italy

- Claimant -

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

vs.

Mr. Maksym Shulga

- Respondent -

1. The Parties

1.1. The Claimant

1. Sigma Srl (“**Agent**” or “**Claimant**”) is an Italian professional basketball agent.

1.2. The Respondent

2. Mr. Maksym Shulga (“**Player**” or “**Respondent**”) is a Ukraine college basketball player.

2. The Arbitrator

3. On 17 January 2025, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (“**BAT**”), appointed Mr. Benny Lo as the arbitrator (“**Arbitrator**”) pursuant to Articles 0.4 and 8.1 of the Arbitration Rules of the Basketball Arbitral Tribunal in force as from 1 February 2024 (“**BAT Rules**”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

4. In June 2021, the National Collegiate Athletic Association in the United States of America implemented an interim policy on name, image and likeness (“**NIL**”), allowing student athletes to make money from third parties for using the athletes’ personal brand and fame.[1]

5. On 1 September 2022, the Player and the Agent entered into a written agreement entitled “*CONTRACT OF AGENCY*” for the Player’s engagement of the Agent to

[1] RfA, para. 69.

represent him ("**Agreement**").[2]

6. Specifically, under article 1(c) ("*SERVICES*") of the Agreement, the Player appointed the Agent to represent him "*in order to promote, negotiate and organize all the commercial, adverting, endorsement and marketing activities connected to* [the Player]*, his name, his image, his voice and his fame*".

7. Pursuant to article 2 ("*EXCLUSIVITY*") of the Agreement, the Agent's right to represent the Player was "*on a worldwide exclusive basis. During the contract period the Athlete is hereby precluded from conferring the same appointment to third parties and/or agents and/or representatives*".

8. The "*CONTRACT PERIOD*" of the Agreement is defined in article 5 as "*2 years from September 1, 2022 until August 31, 2024 unless renewed by written agreement between the parties*".

9. As to the Agent's "*FEES*", they are stipulated in article 3 of the Agreement. Relevantly, article 3(b) provides:

> "*The Agent will have the right – in execution of the services performed as per art.1 lett. c) – to receive from companies, public or private organizations a fee of 20% (twenty) of any compensation produced by advertising and/or merchandising agreements, and/or endorsement contracts, and/or TV, public and private participations and/or other advertising events stipulated during the contract period. The Agent will have the right to the above fee until the expiration term of the advertising and/or merchandising agreements and/or endorsement contracts even if his warranties and obligations under this Agreement are expired and/or not renewed.*"

10. According to the Agent, the Parties worked together without any particular issue through (i) the 2022-2023 season when the Player was playing for Utah State Aggies, and (ii) the 2023-2024 season when the Player was playing for the VCU Rams men's basketball team of Virginia Commonwealth University ("**VCU**").[3]

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[2] RfA, Annex 1.
[3] RfA, para. 35; RfA, Annex 11.

11. The Agent contends that, after the 2023-2024 season, as per the Player's request, the Agent started negotiating commercial opportunities for the Player's NIL with new entities, including the Villanova Wildcats men's basketball team of Villanova University.[4]

12. On 2 May 2024, through the Agent's negotiations, FON VUC LLC (doing business as Friends of Nova) – which is related to the Villanova Wildcats men's basketball team of Villanova University – offered a Letter of Intent ("**FON LOI**") for a License and Service Agreement for the Player's non-exclusive NIL opportunities ("**FON NIL**") for the period of 1 June 2024 to 31 May 2025.[5]

13. In the FON LOI at the 3rd and 4th paras, FON VUC LLC offered *inter alia* that:

> "*When you execute the Agreement, Friends of Nova will compensate you, or cause you to be compensated, up to an anticipated compensation amount of **$900,000.00** in the aggregate for the Term, according to the terms and conditions of the Agreement.* […]
>
> *Our intention it to finalize your specific Agreement by May 31, 2024. Your total compensation will depend upon the nature and extent of the activities specified in the Agreement and your performance of such activities. Pennsylvania law currently prohibits entities such as Friends of Nova from offering compensation based on your attendance at a specific university. As such, the Agreement cannot be executed until after you you're your independent decision of which university, if any, you wish to attend.*"

14. One day later, on 3 May 2024, it was reported that the Player admitted to having committed to joining Villanova University.[6]

15. On 6 May 2024, the Agent confirmed with FON VUC LLC that the FON LOI was approved and asked FON VUC LLC to "*send it signed so we will have Max to sign it and send it back*".[7]

16. On the same day, FON VUC LLC sent its signed version of the FON LOI to the Agent, who forwarded it to the Player for his signature on 7 May 2024, reminding the Player

[4] RfA, paras. 3, 36.
[5] RfA, Annex 2.
[6] RfA, Annex 4.
[7] RfA, Annex 3.

that "*we will also commission you for 10% with Excel (5% for us and 5% for them)*".[8]

17. On 9 May 2024, the Player sent his signed version of the FON LOI to the Agent, saying "*Here attached is the signed file, thanks _________!*"[9] The Agent forwarded it to FON VUC LLC on the same day.[10]

18. According to the Agent, after the Player signed the FON LOI, the Agent kept working to finalise FON NIL with FON VUC LLC, for it to be executed by 31 May 2024 as per the FON LOI.[11]

19. Despite the aforesaid, in late May 2024, it was reported that the Player had decided to remain at VCU after considering a transfer to Villanova University due to "*a more significant NIL offer from VCU*".[12]

20. The Player eventually remained at VCU for the 2024-2025 season.[13]

21. According to the Agent, the Player informed the Agent that he would not sign the FON NIL, since he had entered into a different license and service agreement for the exploitation and/or commercialization of his NIL with VCU and/or its related parties ("**VCU NIL**").[14]

22. After rounds of negotiations over the subsequent weeks, on 21 November 2024, the Agent through its counsel sent the Player an email, claiming the Player to be in breach of the Agreement and requesting him to disclose any contracts he had signed with VCU and/or its related parties by 26 November 2024.[15]

23. With no reply received from the Player, the Agent's counsel sent a final demand notice

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[8] RfA, Annex 3.
[9] RfA, Annex 3.
[10] RfA, Annex 5.
[11] RfA, para. 45.
[12] RfA, Annexes 6-10.
[13] RfA, Annex 11.
[14] RfA, para. 53.
[15] RfA, Annexes 12 & 12a.

to the Player on 27 November 2024, to which the Player made no reply.[16]

24. Against the above background, it is the Agent's case that the Player breached the exclusivity provision in the Agreement by entering into a NIL contract with VCU (and/or its related parties) without the Agent's involvement, for which the Agent claims compensation.

25. On the other hand, the Player has not participated in this arbitration to put forward any defence.

26. Accordingly, the key questions to be determined relate to (i) whether the Player breached the Agreement; and (ii) if so, whether and to what extent the Player is obliged to compensate the Agent under the Agreement.

3.2. The Proceedings before the BAT

27. On 16 December 2024, the Agent filed its Request for Arbitration ("**RfA**") in accordance with the BAT Rules.

28. On 17 December 2024, the Agent made payment of the non-reimbursable handling fee of EUR 4,000.00.

29. On 21 January 2025, the BAT informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case, invited the Player to file his Answer to the RfA by 4 February 2025, and fixed the advance on costs to be paid by the Parties by 31 January 2025 as follows:

"*Claimant (Sigma Srl)*	*EUR 4,500.00*
Respondent (Mr. Maksym Shulga)	*EUR 4,500.00*"

30. On 3 February 2025, the BAT received the Agent's share of the advance on costs paid

[16] RfA, Annexes 13 & 12a; RfA, para. 60.

by it in the amount of EUR 4,500.00.

31. On 5 February 2025, the BAT noted the Player's failure to submits his Answer and to pay his share of the advance on costs, and gave him a final opportunity to do so by 14 February 2025.

32. On 20 February 2025, the BAT noted the Player's failure to submit his Answer and to pay his share of the advance on costs, and invited the Agent to substitute for him for the remaining advance on costs by 27 February 2025.

33. On 21 February 2025, the BAT received the Player's share of the advance on costs paid by the Agent in the amount of EUR 4,500.00.

34. On 4 March 2025, the BAT invited the Parties to address certain questions from the Arbitrator by 11 March 2025.

35. On 7 March 2025, upon the Agent's request on 25 October 2024, the BAT granted the Agent an extension of time to reply to the Arbitrator's questions by 13 March 2025.

36. On 13 March 2025, the Agent filed its submissions in reply to the Procedural Order of 4 March 2025.

37. On 18 March 2025, the BAT noted the Player's failure to submit a response to the Procedural Order of 4 March 2025, and invited him to inform the BAT as to whether he wished to respond to the Agent's submissions of 13 March 2025 by 20 March 2025.

38. By 20 March 2025 and up to date, the Player has not filed any submissions in response to the Procedural Order of 4 March 2025 or to the Agent's submissions of 13 March 2025.

39. On 24 March 2025, the BAT declared that the exchange of submissions was completed and directed the Agent to file its costs submissions by 27 March 2025, including a detailed account of its costs and any supporting documentation in relation thereto.

40. On 24 March 2025, the Agent filed its costs submissions.

41. On 5 May 2025, the BAT re-opened the proceedings and invited the Agent to address certain questions from the Arbitrator by 12 May 2025, with liberty for the Player to respond thereto.

42. On 8 May 2025, the Agent files its submissions in response to the Procedural Order of 5 May 2025.

43. Despite being afforded an opportunity to do so, the Player has not filed any submissions in response to the Agent's submissions of 8 May 2025.

44. On 16 May 2025, the BAT informed the Parties that the proceedings were conclusively closed.

4. The Positions of the Parties

45. The Arbitrator has fully considered all of the Agent's arguments as set out in its written submissions. To keep the length of this Award manageable, only the key points of the Agent's case are highlighted below.

4.1. The Agent's Position

46. On the Agent's case, after the 2023-2024 season, it was in accordance with the Player's request and interest to change to play for Villanova University in the 2024-2025 season that the Agent started negotiating with FON VUC LCC and secured the execution of the FON LOI, thereby paving the way for the FON NIL.[17]

47. The Agent submits that, whilst the Agent was working to finalise the FON NIL, the Player fundamentally breached the Agreement between 9 and 31 May 2024 when he decided not to sign the FON NIL and instead entered into the VCU NIL, in respect of

[17] RfA, paras. 74-77.

which the Agent was excluded from any communication or negotiations.[18]

48. Citing *inter alia* BAT 252/12, the Agent claims to be entitled to "*receive compensation which should put it in the same situation it would have enjoyed had the Contract not been breached by the Player*", even though (i) "*it does not provide its services as a consequence of the Respondent's breach of the Contract*", and (ii) "*the VCU NIL is signed after the natural expiration date of the Contract, but the relevant negotiations started before said date*".[19]

49. The Agent adds that:[20]

(a) "*the Player's breach of Contract represented a damage for the Claimant, who not only lost the FON NIL, but it also lost the possibility to negotiate the VCU NIL, which would have guaranteed the Claimant other fees and career opportunities*";

(b) "*Breaching the Contract by signing the VCU NIL without involving the Agent, the Player undisputedly violated the exclusivity provision established by article 2 of the Contract. Therefore, the Claimant lost its legitimate right to participate in the negotiation related to VCU NIL*";

(c) "*Having the Player signed the VCU NIL excluding the Claimant, the Agent did not have the possibility to participate in the related negotiation*"; and

(d) "*Accordingly, the only possible scenario to restore the Claimant in the same situation it would have enjoyed had the Contract not been breached by the Respondent is represented by receiving compensation equal to 20% of the total value of any agreements regarding the exploitation and/or commercialization of the Player's NIL that is signed by the Player within 31 August 2024, namely 20% of the entire value of the VCU NIL*".

[18] RfA, paras. 79-81, 86.
[19] RfA, paras. 90-91.
[20] RfA, paras. 102-105.

50. On quantum, the Agent submits that:[21]

(a) The FON LOI and the FON NIL "*would guarantee the Agent a commission amounting to 20% of their total value. Specifically, the Player was entitled to remuneration amounting to USD 900,000.00, which 20% amounts to USD 180,000.00*";

(b) "*as a partial amendment of article 3.b) of the Contract, the Player confirmed that he would pay the Agent directly a fee amounting to ten percent (10%) of your remuneration under the LOI (i.e. USD 90,000.00), without prejudice to the Agent's entitlement and right, under article 3.b of the Contract, to charge its residual fee of ten percent (10%). (i.e., USD 90,000.00) from FON VUC LLC upon execution of the FON NIL which, as per the LOI, should have happened by 31 May 2024*";

(c) "*the Claimant requests the Respondent pays compensation for the total amount of USD 180,000.00. In this regard, not only the Player confirmed that he would pay USD 90,000.00 directly to the Agent, but the Respondent's breach of Contract prevented the Claimant from receiving its remuneration from FON VUC LLC (or VCU), as confirmed by the BAT jurisprudence. 'Furthermore, by cutting out the Agency before signing with the Club, the Player prevented the Agency from signing a separate agreement with the Club under which the latter would have paid the Agency its agent fee' (BAT 2049/23)*";

(d) "*the VCU NIL provide higher remuneration than USD 900,000.00, which is the remuneration guaranteed by the Agent to the Player, which 20% (i.e. USD 180,000.00) represents minimum compensation for the lost opportunity that the Claimant suffered due to the Player's breach of Contract*"; and

(e) "*As such, the amount of compensation due to the Claimant shall be 20% of the VCU*

[21] RfA, paras. 111-113, 124-125.

NIL, which in no case can be lower than USD 180,000.00. […]"

51. In the RfA, the Agent seeks the following relief:

"***Preliminary***:

a. *To order the Respondent the production of any contracts (including the related documents, schedules, and annexes) signed by the Respondent with VCU and/or its related entities regarding the exploitation and/or commercialization of the Player's NIL for the 2024/2025 season.*

On the merits:

b. *To accept this claim;*

c. *To decide that, as compensation due to the Respondent's breach of Contract, the Respondent shall pay the Claimant net compensation amounting to 20% of the total value of the contract/s negotiated and/or executed by the Player with VCU and/or its related entities for the 2024/2025 season to be quantified once the Respondent discloses the requested documents, which in no case can be lower than USD 180,000.00, plus five percent (5%) p.a. default interests from 31 May 2024 until full and entire payment.*

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

e. *Further to article 17.4 of the BAT Arbitration Rules, to decide, besides the payment of the non-reimbursable handling fee in the amount of EUR 4,000.00, that the Respondent shall pay the Claimant's legal fees with respect to this procedure in the total amount of EUR 10,000.00.*"

52. In its submissions of 13 March 2025, the Agent amends para. c of its Request for Relief as follows:

"*c. To decide that, as compensation due to the Respondent's breach of Contract, the Respondent shall pay the Claimant net (of any bank, wire, and/or the like fees) compensation amounting to 20% of the total value of the contract/s negotiated and/or executed by the Player with VCU and/or its related entities for the 2024/2025 season to be quantified once the Respondent discloses the requested documents, which in no case can be lower than USD 180,000.00, plus five percent (5%) p.a. default interests from 31 May 2024 until full and entire payment.*"

4.2. The Player's Position

53. The Player has not participated in this arbitration.

5. The Jurisdiction of the BAT

54. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine her jurisdiction *ex officio*, on the basis of the record as it stands.[22]

55. Pursuant to Article 2.1 of the BAT Rules, "[t]*he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland, even if hearings, if any, are held in another place*". Hence, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

57. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[23]

58. To establish the jurisdiction of the BAT, the Agent relies on the arbitration agreement contained under article 7 ("*GOVERNING LAW.DISPUTE RESOLUTION*") of the Agreement, which provides as follows:

> *"This Agreement contains the entire agreement between the parties and there is no oral or written inducements, promises or arrangements except as contained herein. In the case of 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 in 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, irrespective of the parties' domicile. The language of the arbitration of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

59. The Agreement is in writing and thus the arbitration agreement fulfils the formal

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[22] Judgement of the Swiss Federal Tribunal, 120 II 155, 162.

[23] Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

requirements of Article 178(1) PILA.

60. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss Law (referred to by Article 178(2) PILA).

61. For the above reasons, the Arbitrator rules and finds, pursuant to Article 1.3 of the BAT Rules, that he has jurisdiction to finally decide and rule upon the Agent's claims.

6. Other Procedural Issues

62. Article 14.2 of the BAT Rules specifies that "*the Arbitrator may* […] *proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer*." The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.[24] However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

63. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimant's Request for Arbitration. The Respondent, however, chose not to participate in this arbitration.

64. Neither of the Parties has requested a hearing to be held, nor does the Arbitrator consider a hearing necessary. The Arbitrator will therefore decide the Agent's claims based on the written submissions and the evidence on record.

7. Discussion

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[24] See, *ex multis*, BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

7.1 Applicable Law – *ex aequo et bono*

65. 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 is generally translated into English as follows:

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

66. Under the heading "Law Applicable to the Merits", Article 15 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.*"

67. Article 7 of the Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.

68. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in these proceedings, without references to any particular national or international law.

69. 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*[25] (Concordat),[26] under

[25] 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).
[26] 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.*"[27]

70. 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*".

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

7.2 Findings

72. As the Agent's claims are to enforce contractual payment obligations, the doctrine of *pacta sunt servanda* (which provides that parties who make a bargain are expected to stick to that bargain) is the principle by which the Arbitrator will examine their merits.

7.2.1. Breach of the Agreement

73. Under the Agreement, the Agent's right in article 1(c) to represent the Player in respect of his NIL is explicitly stipulated at article 2 as "*on a worldwide* ***exclusive*** *basis*" (emphasis added).

74. Such exclusivity lasts throughout the contract period of the Agreement, as defined in article 5, from 1 September 2022 to 31 August 2024.

75. During this period, pursuant to article 2 of the Agreement, "*the Athlete is precluded from conferring the same appointment to third parties and/or agents and/or representatives.*"

76. On the Agent's case, the Player breached the exclusivity clause by signing the VCU

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

NIL and excluding the Agent from any communication or negotiations about it. In its submissions of 8 May 2025, the Agent adds, *inter alia*, that:

(a) "*the exclusivity clause under Article 2 of the Contract was breached by the Player's negotiations–and in this case, also execution–of the VCU NIL, irrespective of whether such actions were undertaken by the Player himself or through the involvement of another agent*";

(b) "*even if the Respondent negotiated and/or signed the VCU NIL by himself, such conduct would nonetheless constitute a breach of Article 2 of the Contract*";

(c) "*The term "exclusive"* […] *precludes the Player from entering into negotiations or agreements either personally or through other agents or representatives. To interpret otherwise would 1) render the exclusivity clause meaningless, allow for its circumvention through formalistic distinctions*";

(d) "*given the exclusive and worldwide nature of the Contract, the Respondent is unequivocally precluded from negotiating and executing by himself any contract that excludes the Claimant. For such a possibility to be allowed, the Parties would have had to include a specific clause expressly permitting the Player, as the sole counterparty of the Contract, to independently negotiate any agreement as an exception to the exclusivity. However, no such exception is provided for in the Contract*".

77. As supporting evidence of breach of this exclusivity, the Agent relies on:

(a) a number of press reports in late May 2024 that the Player, after having considered a transfer to the Villanova University, decided to remain at VCU for the 2024-2025 season due to "*a more significant NIL offer from VCU*";[28]

(b) the Player's on-line profile page on VCU's "*2024-25 Men's Basketball Roster*" at

[28] RfA, Annexes 6-10.

"https://vcuathletics.com/sports/mens-basketball/roster/max-shulga/5604?print=true".[29]

78. Not having participated herein, the Player has filed no contrary submissions or evidence.

79. Based on the available evidence, the Arbitrator is satisfied and finds, as matter of fact, that the Player has entered into a NIL agreement with VCU without the Agent's involvement in May 2024 while the Agreement remained in effect, although it is not entirely clear on the evidence whether the Player negotiated the same by himself or through other third parties.

80. Whilst the second sentence of article 2 of the Agreement providing that "*the Athlete is precluded from conferring the same appointment to third parties and/or agents and/or representatives*" might on first sight suggest that the Player may represent himself in his commercial negotiations with others (i.e., other than by "*third parties and/or agents and/or representatives*") without breaching the exclusivity, the Arbitrator finds, deciding *ex aequo et bono*, the proper interpretation of article 2 should be principally informed by the phrase "*on a worldwide exclusive basis*". As the Agent submitted, if article 2 is interpreted to permit the Player to represent himself in his commercial dealings, it would render the exclusivity provision meaningless or allow for its circumvention through formalistic distinctions. Furthermore, as the Agent submitted, the second sentence of article 2 does not limit the broad exclusivity provision in the first sentence, but rather provide for a separate and specific obligation not to appoint other people to represent the Player. Accordingly, on this interpretation which the Arbitrator considers reasonable and which the Respondent has not disputed, the Player would have breached the exclusivity provision under article 2 whether he had acted by himself or through others.

81. Turning to the factual question of breach, while the press reports alone adduced by the Agent are insufficient to establish the exact date when the Player signed contract(s)

[29] RfA, Annex 11.

with VCU, they clearly prove that negotiations with VCU started well before the expiry of the Agreement on 31 August 2024. Hence, there can be no doubt that the Player breached article 2 of the Agreement, even if he only signed with VCU after 31 August 2024. As correctly noted by the Agent, negotiations during the term of a representation agreement can amount to a breach of exclusivity even though the player contract is concluded after the expiry of the representation agreement: see BAT 1231/18.

7.2.2. Quantum of compensation

82. The Agent cites BAT 252/12 and requests the Player to compensate 20% of the total value of the NIL contract(s) he signed with VCU and/or its related entities for the 2024/2025, which is said to be no less than USD 180,000.00, so as to put the Agent in the position as if the Player had not breached the Agreement, because the FON LOI and the FON NIL would have guaranteed the Agent a commission of USD 180,000.00 and because it has been reported that the agreement with VCA was financially more lucrative than the FON LOI.

83. In BAT 252/12 at paras. 100, 104, it was held that:

(a) "*It is therefore fair that the Claimant be entitled to compensation for the opportunity that it missed due to the Player not providing it with the expected possibility, as foreseen in the Agency Agreement, of negotiating a new employment contract on his behalf and being paid the agreed commission for that service*";

(b) "*the fairest measure of the lost opportunity corresponds to a commission calculated on the basis of salary the Player is earning under his New Employment Agreement with the Club,* ***since logically and in all probability the Agent would have achieved at least the same result if it had negotiated with the Club instead of the Player*** *and had been able to negotiate with other clubs in addition.*" (emphasis added)

84. In light of the decision in BAT 252/12, the Agent was invited to comment on whether,

in order to substantiate its claims for compensation regarding the Player's NIL contract(s) with VCU, the burden of proof rests on the Agent to show that, but for the Player's breach of exclusivity, the Agent ***(i)*** would have negotiated with VCU (and/or its related entities) on the Player's behalf and ***(ii)*** secured a contract(s) for the exploitation of the Player's NIL for the 2024-2025 season, ***(iii)*** with a total remuneration of no less than USD 900,000.00; and ***(iv)*** if the Agent bears such burden and has proved ***(i)***, ***(ii)*** and ***(iii)***, whether the percentage chance for each of these is relevant to the assessment of the quantum and why?

85. In its submission of 13 March 2025, the Agent submits that the burden of proof does not rest on the Agent to substantiate its claim; and even if the Agent bears such burden, it is satisfied on the balance of probabilities, in that:

(a) On ***(i)***, through the Agent's representation, the Player joined VCU for the 2023-2024 season, after which it was the Player who instructed the Agent to look for different options for the upcoming 2024-2025 season and not to negotiate with VCU. Staying at VCU would have been the easiest solution for the Player, since he was already playing for VCU, and negotiating an extension or renewal would be logically and, in all probability, an easier task than looking for new opportunities;

(b) On ***(ii)***, it was precisely because of the Player's instruction and willingness to leave VCU for new opportunities that the Agent was able to secure the FON LOI, which the Player accepted and signed. Thereafter, the Player, in breach of the Agreement and the basic principles of good faith, used the FON LOI secured by the Agent as a leverage to go back to VCU and ask for an increased offer. In the circumstances, the Agent, logically and in all probability, could have easily achieved the same result at the very least had the Player instructed the Agent to negotiate with VCU. Not only did the Player do the opposite, but he even took advantage of the FON LOI secured by the Agent to eventually go back to VCU, clearly with a view to unlawfully avoiding the payment of commission to the Agent;

(c) On ***(iii)***, as widely reported by the press, the Player's decision to stay with VCU for the 2024-2025 season was purely driven by money, after taking advantage of the FON LOI secured by the Agent as a leverage to ask for an increased offer. If the Player had not specifically instructed the Agent not to negotiate with VCU, the Agent would logically and in all probability have achieved the same result at the very least.

86. As to ***(iv)***, the Agent submits that the percentage chance for each of these is not relevant to the assessment of the quantum; and even if it is relevant, the percentage chance is extremely high for the same reasons as given for ***(i)***, ***(ii)***, ***(iii)***.

87. Not having participated herein, the Player has filed no submissions or evidence to rebut. Despite the BAT's invitation, the Player has failed to disclose "*any contract (including the related documents, schedules, and annexes) signed by the Respondent with VCU and/or its related entities regarding the exploitation and/or commercialization of the Player's NIL for the 2024/2025 season*" as requested by the Agent. In the circumstances, it would serve no purpose to issue an order against the Player to provide such evidence, nor would it be appropriate for BAT to incur time and costs and seek judicial assistance from the Swiss court to compel the Player's disclosure, particularly when the Agent itself could have done so but chose not to do it.

88. In the Arbitrator's view, there is no question that the Agent who is seeking compensation against the Player for the latter's breach of exclusivity under the Agreement bears the burden of proof to substantiate its claim on the quantum, in particular on ***(i)*** to ***(iv)***. This is to show that the Agent suffered a loss as a result of the Player's breach, for which the Agent is entitled to be compensated by the Player. The Agent's submission that it does not bear the burden of proof is accordingly rejected.

89. On the facts of the case, there is nothing to cast doubt on the Agent's ability to negotiate and secure an extension or a new contract with VCU for the 2024-2025 season. The Agent had previously secured the Player's position with VCU for the 2023-2024 season, and VCU was obviously willing to retain the Player for the 2024-2025 season. However,

but for the Player's instructions and his breach of exclusivity, the Agent was deprived from such opportunity to negotiate with VCU and earn the relevant commission.

90. In light of the fact that FON NIL offered "*an anticipated compensation amount of $900,000.00*", and considering the press reports that the Player decided to stay with VCU for "*for an increased offer*", the Arbitrator is satisfied and finds, on the balance of probability, that the Player would earn no less than USD 900,000.00 under his contract(s) with VCU (and/or its related entities) for the 2024-2025 season.

91. Under article 3(b) of the Agreement, the Agent is entitled to a commission equal to 20% of "*any compensation produced*" by NIL contracts secured by it for the Player in execution of its services under article 1(c) of the Agreement. According to the Agent, article 3(b) of the Agreement was partially amended that 5% out of the 20% commission would be shared with another agency known as Excel. Despite such an amendment, it does not affect the Agent's contractual entitlement to 20% commission vis-à-vis the Player under the Agreement, to which only the Agent and not Excel is a party.

92. As a result of the Player's breach, therefore, the Agent suffered a loss of commission for the Player's contract(s) with VCU for the 2024-2025 season, which is no less than USD 180,000.00.

93. For the above reasons, the Arbitrator finds that the Player is liable to compensate the Agent the amount of **<u>USD 180,000.00</u>** as its lost commission.

94. As to the Agent's request for its claimed compensation to be "*net of any bank, wire, and/or the like fees*", the Arbitrator sees no reason not to allow it. This is to ensure that the Agent will receive its full compensation in its entirety.

7.2.3. Interest

95. The Agent claims interest at 5% per annum from 31 May 2024 on the basis that the Player should have signed the FON NIL by then.

96. The usual interest rate is 5% per annum under the well-established BAT jurisprudence, from which the Arbitrator sees no reason to depart.

97. In its submissions of 13 March 2025, although the Agent accepts that article 3(b) of the Agreement is silent on the payment date, the Agent submits that it is entitled to receive commission from the date of the execution of the VCU NIL, which should have been signed before the end of May 2024 as widely reported.

98. In the Arbitrator's view, as noted above, the press reports alone are insufficient to establish exactly when the Player signed contract(s) with VCU. They only tend to show that the Player breached the exclusivity by negotiating with VCU before the expiry of the Agreement. Hence, there is no basis for the Agent to claim interest from 31 May 2024. In any event, despite the Arbitrator's invitation, the Agent has offered no explanation as to why it is entitled to interest from 31 May 2024 when it only demanded the Player to pay compensation for the first time on 21 November 2024.

99. In the circumstances, the Arbitrator finds it fair and reasonable to award interest from 22 November 2024, being the day after the demand was made, until payment in full.

8. Costs

100. In respect of arbitration costs, Article 17.2 of the BAT Rules provides:

> "*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).* […]"

101. On 29 April 2025, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 9,000.00.

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

> "*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.*"

103. Save for its claim for interest, the Agent has been almost wholly successful in its claims against the Player. As the Agent has paid the entirety of the advance on costs for this arbitration, the Player shall reimburse the Agent the amount of **EUR 9,000.00** as the costs of arbitration.

104. In relation to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides:

> "*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.*"

105. Moreover, Article 17.4 of the BAT Rules provides for the maximum amounts a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). Considering the aggregate amount of USD 184,906.85 as claimed by the Agent in this arbitration, the maximum amount of contribution payable to the Agent's reasonable legal fees and other expenses is EUR 10,000.00.

106. In its costs submissions dated 24 March 2025, the Agent claims legal fees and expenses of EUR 10,000.00. This is within the said maximum amount. Considering the value of the claim, the relative complexity of the matter, and that the Agent is almost wholly successful, the Arbitrator determines that the Agent is entitled to a contribution to its legal fees and expenses in the amount of **EUR 7,500.00**.

107. Finally, given the above, the Arbitrator further finds that the Agent is entitled to be reimbursed fully of the non-reimbursable fee (EUR 4,000.00), i.e. in the amount of **EUR 4,000.00**.

BASKETBALL
ARBITRAL TRIBUNAL

9. AWARD

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

1. **Mr. Maksym Shulga shall pay Sigma Srl the amount of USD 180,000.00 (net of any bank, wire, and/or the like fees) together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 22 November 2024 until payment in full.**

2. **The costs of this arbitration until the present Award shall be borne by Mr. Maksym Shulga alone. Accordingly, Mr. Maksym Shulga shall reimburse the amount of EUR 9,000.00 to Sigma Srl as the costs of arbitration.**

3. **Mr. Maksym Shulga shall pay Sigma Srl the further amounts of EUR 7,500.00 as a contribution towards its legal fees and expenses and EUR 4,000.00 as reimbursement of the non-reimbursable handling fee.**

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

Geneva, seat of the arbitration, 27 May 2025

Benny Lo
(Arbitrator)