



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0006/08 FAT)

rendered on 29 September 2008 by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. **Jamel Thomas** (the "Player"), c/o Priority Sports & Entertainment, 325 N La Salle Drive, Suite 650, Chicago, IL 60610 USA

- Claimant 1 -

and

Priority Sports & Entertainment ("Priority Sports"), 325 N La Salle Drive, Suite 650, Chicago, IL 60610 USA

- Claimant 2 -

and

Mr. **Mario Scotti**, c/o Priority Sports & Entertainment, 325 N La Salle Drive, Suite 650, Chicago, IL 60610 USA

- Claimant 3 -

or jointly "the Claimants"

vs.

S.S. Basket Napoli s.r.l. ("Basket Napoli"), Via Giochi del Mediterraneo, 80125 Napoli, Italy.

- Respondent -



We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimants

Mr. Jamel Thomas is a professional basketball player and American citizen, who was playing for Basket Napoli at the time of the relevant facts. In this proceeding the Player is represented by Mr. Brad Ames of Priority Sports.

Priority Sports acts among others as a basketball agency and is represented in this proceeding by Mr. Brad Ames.

Mr. Mario Scotti is an agent and is represented in this proceeding by Mr. Brad Ames on behalf of Priority Sports.

1.2. The Respondent

Basketball Napoli is an Italian basketball club.

2. The Arbitrator

On 25 July 2008, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Mr. Quentin Byrne-Sutton, attorney-at-law in Geneva, Switzerland, as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").



We Are Basketball

FIBA Arbitral Tribunal (FAT)

3. Facts and Proceedings

3.1. Background Facts

According to Article 1 of an agreement dated 5 July 2007 (hereinafter the “Contract”), Basket Napoli engaged the services of the Player “... *for a term of one (1) basketball season (2007/2008) to commence on the date hereof and to continue through the first day following the final game in which the Club participates in the 2007/2008 regular season and/or the 2007/2008 Italian League playoffs for that season, whichever date occurs later*”.

Article 2 of the Contract provides a detailed schedule of all the payments (14 in total) owed to the Player as his base salary, together with the due dates for each payment. The first payment was due to be made upon passing the initial physical exam and the final payment on 30 June 2008. It also stipulates that “...*any payment to Player pursuant to the above shall be subject to an interest penalty of Fifty Dollars (\$50.00 USD) per day for each day said payment was due*”.

The Contract includes an Addendum named “*Agent’s Commission*”, signed by Basket Napoli, whereby “... *S.S. Basket Napoli S.r.l. (the “Club”) agrees to pay \$13’750.00 USD to Priority Sports & Entertainment and \$13’750.00 USD to Mario Scotti upon the Player’s passage (or deemed to have passed) of his physical examination for the Agreement year 2007/2008. All of these payments, as applicable, payable to Priority Sports & Entertainment shall be wired to [bank account number of Priority Sports]*”.

According to Claimants, the Player met all his obligations under the Contract by playing the whole season 2007/2008 but was not paid his entire salary, and the agent’s



We Are Basketball

FIBA Arbitral Tribunal (FAT)

commissions were not paid. Consequently, they are claiming payment of those amounts.

3.2. The Proceedings before the FAT

On 14 July 2008, Claimants filed a Request for Arbitration in accordance with the FAT Rules, and subsequently duly paid the non-reimbursable fee of EUR 3,000.00.

On 21 July 2008, Claimants filed an updated Request for Arbitration.

On 25 July 2008, the FAT informed the parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the amount of advance on arbitral costs to be paid by the Parties.

On 6 August 2008, Claimants paid their portion of the advance on arbitral costs fixed by the FAT, i.e. EUR 4,000.00.

On 7 August 2008, Respondent indicated that: *“With regard to the FAT 006/08 proceedings Thomas and Ames Vs Costa Basket Napoli, the Basket Napoli Club, taking note of the situation of Jamel Thomas regarding the non payment of a part of salary (according to private contract regularly subscribed by both parties on July 6 2007), declares the intent to proceed with the arbitration without oppose any particular defense since recognizing his own responsibilities.”*

On 29 August 2008, upon the request of the FAT Secretariat and in accordance with Section 9.3 of the FAT Arbitration Rules (“FAT Rules”), Claimants paid a further advance of EUR 4,000.00 in substitution for Respondents non payment of the same.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

On 9 September 2008, the Arbitrator issued Procedural Order No 1 requesting Claimants to answer certain factual questions and to produce certain documents relating to the Contract and the claim.

On 10 September 2008, Claimants filed a submission answering the questions raised in Procedural Order No 1 and attaching related exhibits.

On 15 September 2008, on behalf of the Arbitrator, the FAT Secretariat declared the proceedings closed and asked the Parties to submit their costs by 25 September 2008.

On 16 September 2008, the Claimants submitted their costs. Respondent submitted no costs within the fixed deadline.

4. The Positions of the Parties

4.1. The Claimants' Position

The Claimants submit the following:

“Jamel Thomas is due a net total of \$275'000 USD in base salary from S.S. Basket Napoli s.r.l. for the 2007-2008 basketball season per the attached Agreement dated July 5, 2007. To date, Mr. Thomas has only received \$212,750.00 USD from Napoli.

In addition, Priority Sports and Mario Scotti are due a net total of \$27,500.00 USD in agents' commission from S.S. Basket Napoli s.r.l. per the attached addendum to the Agreement dated July 5, 2007. To date, Priority Sports and Mario Scotti have received no payments from Napoli.”



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

On such basis, Claimants request the Tribunal to award:

"Immediate payment to Jamel Thomas in the amount of \$79,550.00 USD. This amount represents \$62,250.00 USD in past due base salary, and \$17,300.00 in late payment penalties described in Paragraph 2 of the attached Agreement (see attached worksheet).

Immediate payment to Priority Sports in the amount of \$27,500.00 USD, which represents past due Agent's Commission.

Reimbursement to Priority Sports in the amount of €3'000. 00 EUR, which represents the handling fee for this Request for Arbitration, which was paid for by Priority Sports."

4.2. Respondent's Position

The Respondent has not submitted any arguments or prayers for relief but *"...declare[d] the intent to proceed with the arbitration without oppose any particular defense since recognizing his own responsibilities."*

5. Jurisdiction of the Arbitrator

The Contract contains the following arbitral clause:

"11. Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT 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.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sports (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.

The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."

The Arbitrator's jurisdiction is not challenged and is based on the foregoing arbitral clause and the FAT Rules.

6. The Merits of the Claim: Discussion

6.1. Applicable Law

Article 11 *in fine* of the Contract provides that "*The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono*".

Section 15.1 of the FAT Rules provides that: "*Unless the parties have agreed otherwise 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*".

Consequently, the Arbitrator shall adjudicate the claims *ex aequo et bono*.

6.2. Findings

The Arbitrator finds the provisions of the Contract and of the Addendum are clear as to the contractual amounts owned to each of the three Claimants and to their due dates,



We Are Basketball

FIBA Arbitral Tribunal (FAT)

and that such provisions are equally clear concerning the applicable penalty in case of late payments relating to the Player's base salary.

Furthermore, the worksheet of late payments of the Player's base salary submitted by Claimants, including a computation of the corresponding penalties, is in correlation with the contractual terms and mathematically adds up correctly to the total amount being claimed.

Finally, Claimants' allegations regarding the non payments make sense and are convincingly supported by relevant documents while at the same time Respondent has chosen not to challenge the claim despite being informed of its content and having had the opportunity to dispute the claim. In that relation, Respondent submitted to FAT that Basket Napoli: *"declares the intent to proceed with the arbitration without oppose any particular defense since recognizing his own responsibilities"*.

For the above reasons, the Arbitrator finds that Claimants have convincingly established that their claim is well founded, and the Arbitrator considers it just and fair to award to Claimants the entire amount they are claiming on the merits.

For the sake of clarity and completeness, the Arbitrator wish to point out that, in light of the contractual documentation in the record, the amount of USD 27,500.00 claimed as "past due Agent's Commission" is to be split in equal parts between (i) Priority Sports & Entertainment and (ii) Mr. Mario Scotti (i.e. USD 13,750.00 each).

7. Costs

Article 19.2 of the FAT Rules provides that the final amount of the costs of the arbitration shall be determined by the FAT President and may either be included in the award or



We Are Basketball

FIBA Arbitral Tribunal (FAT)

communicated to the parties separately. Furthermore, article 19.3 of the FAT Rules provides that the award shall determine which party shall bear the costs and in which proportion.

On 29 September 2008, the President of the FAT rendered the following decision on costs:

“Considering that under Swiss law the arbitrators have the obligation to decide on the amount and the allocation of the arbitration costs as well as on the contribution towards the parties’ legal fees (BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 1477, p. 521).

Considering that pursuant to Article 19.2(1) of the FAT Rules “the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator”.

Considering that Article 19.2(2) of the FAT Rules adds that ‘the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to time’.

Considering all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and of the procedural questions raised, the President of the FAT determines the arbitration costs as follows:

• Arbitrator’s fees (10.4 hours at an hourly rate of EUR 300)	EUR 3,120.00
• Arbitrator’s costs	EUR ----
• Administrative and other costs of FAT	----
• Fees of the President of the FAT	EUR 820.00
• Costs of the President of the FAT	----
TOTAL	EUR 3,940.00”

Together Claimants have already paid to the FAT a total amount of **EUR 11,000.00** towards the fees and costs of arbitration, in the following amounts and proportions:

a) Claimant No 1 paid to the FAT 1/3 (EUR 1,333.34) of the advance on costs (EUR



We Are Basketball

FIBA Arbitral Tribunal (FAT)

4,000) required from Claimants, representing 12.125% of the total amount of EUR 11,000.00.

- b) Claimant No 2** paid to the FAT the non-reimbursable handling fee of EUR 3,000, 1/3 (EUR 1,333.34) of the advance on costs (EUR 4,000) required from Claimants, and the advance on costs of EUR 4,000 required from Respondent that the Claimants were requested to substitute for, i.e. an amount of EUR 8,333.34, representing 75.75% of the total amount of EUR 11,000.00.
- c) Claimant No 3** paid to the FAT 1/3 (EUR 1,333.34) of the advance on costs (EUR 4,000) required from Claimants, representing 12.125% of the total amount of EUR 11,000.00.

Consequently, FAT shall reimburse to Claimants, in the corresponding proportions, the difference between the EUR 11,000 paid to the FAT and the EUR 6,940 (EUR 3,000 of non-reimbursable handling fee + EUR 3,940 of arbitral costs) owed to the FAT, such difference representing **EUR 4,060**.

Thus FAT shall reimburse EUR 492.30 (12.125% of EUR 4,060) to Claimant 1, EUR 3075.40 (75.75% of EUR 4,060) to Claimant 2 and EUR 492.30 (12.125% of EUR 4,060) to Claimant 3.

Considering that Claimants entirely prevailed in their claim, the Arbitrator deems it fair that the total amount of fees and costs paid by them to the FAT, i.e. **EUR 6,940** (EUR 3,000 of non-reimbursable handling fee + EUR 3,940 of arbitration costs) be borne by Respondent.

Consequently, Respondent shall pay a part of the foregoing amount to each Claimant that is



We Are Basketball

FIBA Arbitral Tribunal (FAT)

proportional to the amount paid by each Claimant to the FAT for the arbitral fees and costs, i.e.:

- (i) EUR 841.50 (12.125% of EUR 6,940) to Claimant 1
- (ii) EUR 5,257.0 (75.75% of EUR 6,940) to Claimant 2
- (iii) EUR 841.50 (12.125% of EUR 6,940) to Claimant 3

With respect to the Parties legal fees, neither Claimants nor Respondent have submitted any, therefore none shall be adjudicated.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

8. AWARD

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

1. **S.S. Basket Napoli s.r.l. shall pay Mr. Jamel Thomas an amount of USD 79,550.00, as outstanding salary and related penalties.**
2. **S.S. Basket Napoli s.r.l. shall pay Mr. Jamel Thomas an amount of EUR 841.50, as a reimbursement of part of the arbitral fees and costs.**
3. **S.S. Basket Napoli s.r.l. shall pay Priority Sports & Entertainment an amount of USD 13,750.00, as part of the agency commission.**
4. **S.S. Basket Napoli s.r.l. shall pay Priority Sports & Entertainment an amount of EUR 5,257.00, as a reimbursement of part of the arbitral fees and costs.**
5. **S.S. Basket Napoli s.r.l. shall pay Mr. Mario Scotti an amount of USD 13,750.00, as part of the agency commission.**
6. **S.S. Basket Napoli s.r.l. shall pay Mr. Mario Scotti an amount of EUR 841.50, as a reimbursement of part of the arbitral fees and costs.**
5. **Any and all other requests for relief are dismissed.**

Geneva, place of the arbitration, 30 September 2008.

A handwritten signature in black ink, appearing to read 'Q. BS'.

Quentin Byrne-Sutton
(Arbitrator)



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Notice about Appeals Procedure

cf. Article 17 of the FAT Rules

which reads as follows:

"17. Appeal

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."