We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0023/08 FAT)

rendered by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Ulrich Haas

in the arbitration proceedings between

XL Basketball Agency, Mr. Robert Jablan, Cernička 41, 10000 Zagreb, Croatia
represented by Dr. Špelca Mežnar, Čeferin Law Office, Taborska 13, 1290 Grosuplje, Slovenia

- Claimant -

vs.

Basketball Club AEL Limassol, Fisko Lotus Plaza 3, Gropious st. 3, 3076 Limassol, Cyprus
represented by Mr. Michalis Severis, Patrikios Pavlou & Co Advocates - Legal Consultants, "Patrician Chambers", 332 Agiou Andreou Street, P.O. Box 54543, 3725 Limassol, Cyprus

- Respondent -

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1. The Parties

1.1. The Claimant

1. XL Basketball Agency (hereinafter “Claimant”) is a player’s agency with its legal seat in Zagreb, Croatia. Its representative, Dr. Špelca Mežnar, is an attorney-at-law of Čeferin Law Office domiciled in Grosuplje, Slovenia.

1.2. The Respondent

2. Basketball Club AEL Limassol (hereinafter “AEL” or “Respondent”) is a basketball club with its seat in Limassol, Cyprus. AEL is a professional basketball club domiciled at Fisko Lotus Plaza 3, Gropious st. 3, 3076 Limassol, Cyprus. Respondent is represented by Mr. Michalis Severis, Advocate in Patrikios Pavlou & Co, domiciled in Limassol, Cyprus.

2. The Arbitrator

3. On 18 February 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Prof. Ulrich Haas as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the

Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

4. On 10 March 2009 the Arbitrator accepted his appointment and signed a declaration of acceptance and independence provided by the FAT Secretariat. None of the parties has raised objections to the appointment of the Arbitrator or to the declaration of independence issued by him.

3. Facts and Proceedings

3.1. Background Facts

5. On 31 October 2007, the Respondent, Mr. Bruno Sundov (a professional basketball player, hereafter “the Player”) and the Claimant signed a contract (“the Agreement”). According to the Agreement the Respondent employed the Player as a skilled player for the 2007/2008 basketball season. Furthermore, the Agreement provides an amount of EUR 9,900.00 for the services of the Claimant (“the Agent Fee”). The Agreement reads in its relevant part as follows:

> *“14. For Services of locating and contracting the Player, AEL Limassol (“Club”) agrees to pay Agent’s commission of 9900 Euro (Nine Thousand Nine Hundred Euro) Net of taxes for the 2007/2008 basketball season to XL Basketball Agency (“Agent”) upon the Player’s passage (or deemed to have passed) of his physical examination.*
>
> *All of these commission payments shall become guaranteed and vested upon Player passing (or deemed to have passed) of Club’s physical examination. Failure by Club to make commission payments as and when due shall relieve the Player of his obligations to perform his services under the Agreement, but shall not relieve the Club of its payment obligations to Player and Agent.*

In case this Agreement is made without the direct supervision and approval of XL Basketball Agency, the Club shall be liable for payment of ten percent (10%) of the agreed Player's base salary to the XL Basketball Agency. Club shall pay ten percent (10%) of the agreed Player's base salary to the XL Basketball Agency for any future agreement (new or change terms) between Club and Player.

THE PAYMENTS REQUIRED TO BE MADE BY CLUB TO PLAYER AND AGENT PURSUANT TO PARAGRAPHS 2, 6 AND 14 ABOVE AND THE TAX PAYMENTS AS DESCRIBED IN PARAGRAPH 4 ABOVE AND THE GOODS AND SERVICES PROVIDED BY CLUB TO PLAYER PURSUANT TO THE APPLICABLE TERMS OF THIS AGREEMENT, ARE ALL FULLY GUARANTEED AS SET FORTH HER IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above."

6. The Respondent and the Player entered into a Termination Agreement signed by the Player on 23 February 2008 and by the Respondent on 16 February 2008. It reads in its relevant part as follows:

"In consideration of the mutual promises contained herein, the parties agree as follows:

As of today (February 16th 2008) parties mutually agree to terminate the existing contract between them entered into on October 31st 2007. It is understood that as of today player shall not be required to participate in any games or practices scheduled by Club or fulfil any obligations under his contract with Club. It is absolutely understood that Club gives Player permission to leave Club and grants him an unconditional free agent status. Club agrees to give Player his FIBA Letter of Clearance in order for him to play basketball anywhere in the world he chooses. Club shall have no rights over or with respect to Player, and Club will not be entitled to request or receive any payments pertaining to him playing basketball anywhere in the world in the future. It is absolutely understood that by signing of this Agreement, parties will not have any financial obligation toward each other."

7. On 16 February 2008, Mr. Robert Jablan on behalf of the Claimant, wrote a letter to the Respondent, for the attention of Mr. Haris Papadopoulos, confirming the termination of the Agreement.

8. After repeatedly requesting the payment of the Agent Fee, on 3 November 2008, the

Claimant wrote a letter to the Respondent advising the Respondent that it had failed to pay the Agent Fee as required under the Agreement and that, therefore, the Claimant was asking for the last time the payment of said fee. Mr. Jablan's letter set a final time limit until 10 November 2008 for Respondent to pay the Agent Fee in the amount of EUR 9,900.00. In the event that the payment was not received by then, the Claimant advised that it would *"file this case with the FIBA Arbitration Tribunal"*.

3.2. The Proceedings before the FAT

9. On 4 February 2009 the Claimant filed a Request for Arbitration dated 24 November 2008. The non-reimbursable handling fee of EUR 3,000.00 was received in the FAT bank account on 29 February 2009.

10. By Procedural Order (No 1) of 18 February 2009, the FAT Secretariat on behalf of the Arbitrator confirmed receipt of the Request for Arbitration and informed the parties of the appointment of the Arbitrator. Also, the Claimant was invited to provide the FAT with a Power of Attorney confirming that Dr. Mežnar was entitled to act on its behalf. In the same Procedural Order, a time limit was fixed until 12 March 2009 for the Respondent to file its Answer to the Request for Arbitration. The Order also requested the parties to pay, by no later than 5 March 2009, the following amounts as an Advance on Costs:

"Claimant (XL Basketball):	*EUR 3,000*
Respondent (BC AEL Limassol):	*EUR 3,000"*

11. Given that no payment had been received in the FAT account until 5 March 2009, on 13 March 2009 the Arbitrator granted an additional time limit, requesting the parties to effect payment until 20 March 2009.

12. On 24 March 2009, Mr. Michalis Severis sent an e-mail to the FAT Secretariat indicating that he was instructed by the Respondent to act as its counsel. Furthermore, he requested an extension of the time limit for payment of the Advance on Costs and to file the Answer to the Request for Arbitration until 8 April 2009.

13. With Procedural Order (No 3), dated 30 March 2009, the FAT Secretariat on behalf of the Arbitrator confirmed receipt of the e-mail dated 24 March 2009 sent by Mr. Michalis Severis and invited him to provide the FAT with a Power of Attorney confirming that he would be acting on behalf of the Respondent in the proceedings at hand. The Arbitrator noted that none of the parties had paid its share of the Advance on Costs and amended the Procedural Order of 18 February 2009 so as to include the new representative of the Respondent. Furthermore, the Arbitrator granted an additional extension of the time limits for the Respondent to file its Answer until 8 April 2009 and for the parties to pay their Advance on Costs by no later than 3 April 2009.

14. On 8 April 2009, the Respondent filed its Answer to the Request for Arbitration. With Procedural Order (No 4) of 15 April 2009, the FAT Secretariat on behalf of the Arbitrator acknowledged receipt of the Answer. Furthermore, the Secretariat noted that the parties had failed to pay their share of the Advance on Costs and stated that the proceedings could only go forward after receipt of the Advance on Costs in the FAT Account (Art. 9.3 of the FAT Rules). The parties were therefore urgently requested to pay their respective shares of the Advance on Costs by no later than 24 April 2009.

15. Given that this time limit for payment of the Advance on Costs was again not met by the parties, the FAT Secretariat on behalf of the Arbitrator fixed a final time limit until 15 May 2009. In his Procedural Order (No 5) dated 8 May 2009, the Arbitrator emphasized that: ***"In the event that the FAT has not received any of the shares of the advance***

of costs by 15 May 2009, the Request of Arbitration shall be deemed withdrawn."

16. By Procedural Order (No 6) dated 22 May 2009 the FAT Secretariat on behalf of the Arbitrator acknowledged receipt of the Claimant's share of the Advance on Costs. The Secretariat informed the parties that the Answer was forwarded to the Arbitrator for review and that the Respondent had failed to pay its share of the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, the Claimant was invited to substitute for the missing payment of the Respondent until 5 June 2009.

17. The Claimant paid the Respondent's share of the Advance on Costs on 4 June 2009.

18. With Procedural Order (No 7) dated 14 July 2009, the FAT Secretariat forwarded the Answer to the Claimant and advised the parties on behalf of the Arbitrator that the exchange of documents was completed pursuant to Article 12.1 of the FAT Rules. Since none of the parties asked for a hearing to be held, the Arbitrator decided not to hold a hearing and to deliver the award on the basis of the written submissions of the parties. Finally, the parties were invited to submit a detailed account of costs by no later than 22 July 2009.

19. On 21 July 2009, the Claimant submitted the following account of costs:

> *"Initial non-reimbursable handling fee – 3.000,00 EUR*
>
> *Advance of the costs paid according to the decision by the arbitrator – 3.000,00 EUR*
>
> *Advance of the costs paid instead of the Respondent – 3.000,00 EUR*
>
> *Attorney's Fees – 3.500,00 EUR (10 hours per 350,00 EUR)*
>
> *Total Amount: 12.500,00 EUR (twelve thousand five hundred euro)"*

20. On 21 July 2009, the Respondent submitted the following account of costs:

> *"Amount of costs: 2200 EUR, plus V.A.T. 15%.*
>
> *Total Amount of costs: 2530 EUR (including V.A.T – two thousand five hundred and thirty euro)."*

4. The Parties' Submissions

4.1. Claimant's Submissions

21. The Claimant submits that, according to Article 14 of the Agreement, the Respondent was obliged to pay the Agent Fee in the amount of EUR 9,900.00 net of taxes immediately upon the Player's successful passing of the medical examination.

22. The Claimant further submits that the Player successfully passed the physical examination on 7 November 2007 and that from this date the Respondent was late with its payment of EUR 9,900.00. Finally, the Claimant submits that the Respondent did not pay the Agent Fee despite several reminders.

4.2. Claimant's Request for Relief

23. On the basis of the contentions set out above, the Claimant requests in particular that:

> *"- According to Par. 14 of the Agreement, the Respondent Basketball Club AEL Limassol is obliged to pay to the Claimant XL Basketball Agency the Agent's commission in the*

amount 9,900.00 EUR (nine thousand nine hundred euro) net of taxes plus interests at the applicable rate since 7.11.2007 as a customary and fair compensation for the late payment.

- *The Respondent shall reimburse the Claimant the costs of these arbitral proceedings, including legal fees and expenses incurred in connection with the proceedings."*

4.3. Respondent's Submissions

24. The Respondent rejects the claim of the Claimant for the following reasons:

25. The Respondent claims that the Agreement signed on 31 October 2007 was made only between itself and the Player. The Agent was just acting as a representative of the Player and/or acting on behalf of the Player. This is evidenced by Article 12 of the Agreement which states that any modification of the Agreement should be in writing and signed by the Respondent and the Player.

26. The Respondent further submits that on 16 February 2008 the Player and the Respondent entered into a Termination Agreement that ended their Agreement of 31 October 2007. The Claimant was aware of the Termination Agreement, as confirmed by Mr. Robert Jablan on its behalf by letter of 16 February 2008. According to the Respondent, the obligation to pay any Agent Fee was waived together with many other financial obligations as a result of the Termination Agreement dated 16 February 2008.

27. The Respondent further submits that the question of whether the Player is obliged to give the Claimant a "pay-off" due to the termination of the Agreement is an issue between the Player and the Claimant which, in any case, has nothing to do with the Respondent and the current proceedings.

4.4. Respondent's Request for Relief

28. The Answer to the Request for Arbitration contains the following Request for Relief:

> *"Arbitration award adjudicating that the Respondents have absolutely no financial obligation towards the Claimants and/or they do not have an obligation to pay the requested amount of € 9.900 to the Claimants and/or any interest and/or any other compensation.*
>
> *The Claimant should reimburse the Respondents the costs of there [sic] arbitral proceedings including legal fees and expenses incurred in connection to and/or arising from the proceedings."*

5. Jurisdiction and other Procedural Issues

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

5.1. The jurisdiction of the FAT

30. The jurisdiction of the FAT to decide this dispute results from Article 11 of the Agreement which reads as follows:

> *"Any disputes arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively in accordance with the FAT Arbitration Rules. The Arbitrator shall decide the dispute ex aequo et bono.*

Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded."

31. The Respondent did not challenge the jurisdiction of FAT. Hence the Arbitrator asserts jurisdiction over the present dispute (Art. 186 (2) PILA). For the sake of completeness, the Arbitrator will nevertheless examine the validity of the arbitration agreement contained in the Agreement (see 5.3 below).

32. The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement by the parties.

5.2. Arbitrability

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

5.3. Formal and substantive validity of the arbitration agreement

34. The existence of a valid arbitration agreement will be examined in light of Article 178 PILA, which reads as follows:

"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

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

> *2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."*

35. An arbitration clause has been included in the Agreement and said Agreement has been signed by the Respondent, the Player and the Claimant. The Agreement, thus, is in written form and fulfils the formal requirements of Article 178(1) PILA.

36. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt as to the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording "[a]ny disputes arising or related to the present Agreement" clearly encompasses the above mentioned requests.[2]

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

37. 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",* as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated

[2] *See* for instance BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 466, pp. 160-161.

into English as follows:

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

38. Under the heading "Applicable Law", Article 15.1 of the FAT Rules reads as follows:

> *"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."*

39. In their agreement to arbitrate, the parties have explicitly directed and empowered the Arbitrator to decide the dispute *ex aequo et bono*. Consequently, the Arbitrator will adjudicate the present matter *ex aequo et bono*.

40. 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*[3] (Concordat),[4] under 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."*[5]

41. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to

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3 That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

4 P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

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

legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case".[6]

42. This is confirmed by the provision in Article 15.1 of the FAT Rules *in fine* that the arbitrator applies "general considerations of justice and fairness without reference to any particular national or international law".

43. In light of the foregoing developments, the Arbitrator makes the following findings:

6.2. Findings

44. Claimant presented the FAT with the Agreement pursuant to which the Respondent owes him the amount of EUR 9,900.00 for the services of locating and contracting the Player. This Agreement was concluded on 31 October 2007 and bears the signatures of the Player, the Claimant and the Respondent including the Club's seal. There are no circumstances which would create doubts as to the validity and enforceability of the Agreement. The question, however, is whether or not the Claimant is a party to the Agreement and has a right to claim monies according to the Agreement.

6.2.1 Claimant as a party to the Agreement

45. Whether the Claimant is in fact a party to the Agreement seems questionable at first sight. This is true, when one looks at the heading of the Agreement which reads "Agreement between Bruno Sundov and AEL Limassol".

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6 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

46. However, when looking at the Agreement as a whole, there can be no doubt that the Claimant is a party to it. This is evidenced by the fact that the Claimant has signed the Agreement not in lieu of the Player but together with the Respondent and the Player. Furthermore, the signature by the Claimant's representative does not bear any remarks or additions according to which it could be inferred that he was acting in the interest or on behalf of the Player. In the absence of evidence to the contrary, the rule is that when passing a contract a person is taking care of his or her own interests and not the interests of another party and, hence, is personally bound and entitled by the agreement entered into.

47. Also the wording and the economic rationale of the Agreement speak in favour of a tri-partite contract, since according to Article 14 the Claimant is to receive an Agent Fee of EUR 9,900.00. The very last paragraph of the Agreement reads:

> *"THE PAYMENTS REQUIRED TO BE MADE BY CLUB TO PLAYER AND AGENT PURSUANT TO PARAGRAPHS 2, 6 AND 14 ABOVE AND THE TAX PAYMENTS AS DESCRIBED IN PARAGRAPH 4 ABOVE AND THE GOODS AND SERVICES PROVIDED BY CLUB TO PLAYER PURSUANT TO THE APPLICABLE TERMS OF THIS AGREEMENT, ARE ALL FULLY GUARANTEED AS SET FORTH HER IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above."*
>
> *(emphasis added)*

48. It does not make much economic sense to assign the claim for the Agent Fee to someone else than the Claimant. This is all the more true as the last paragraph of the Agreement expressly stipulates that payments have to be made to the agent directly and not via another party. If an agreement stipulates that a person is to receive a payment it appears only reasonable that such person should be entitled to claim the payment and, thus, is to be considered a party to such agreement.

49. To sum up, therefore, the Arbitrator finds that both Claimant and Respondent are

autonomous parties to the Agreement and are bound by the respective obligations contained therein.

6.2.2 The prerequisites of the claim for Agent Fee

50. According to the very last paragraph of the Agreement, the payments required to be made by the Respondent to Player and Agent pursuant to Articles 2, 6, and 14 of the Agreement are fully guaranteed. Furthermore, the Agreement provides in Article 14 par. 2:

> *"All of these commission payments shall become guaranteed and vested upon player passing (or deemed to have passed) the Club's physical examination. Failure by Club to make commission payments as and when due shall relieve the Player of his obligations to perform his services under the Agreement, but shall not relieve the Club of its payment obligations to Player and Agent."*
>
> *(emphasis added)*

51. The condition for the payment of the Agent Fee provided in the Agreement, namely the passing of the Player's medical examination, has been met on 7 November 2007. The Claimant has repeatedly requested the Respondent to pay the Agent Fee, and there is no indication that the Respondent actually complied with its obligation. The Arbitrator therefore concludes in the light of the clear provision in Article 14 of the Agreement that the conditions for the claim for the Agent Fee in the amount of EUR 9,900.00 are met.

6.2.3 No waiver of the claim for Agent Fee

52. The Respondent submitted to the FAT the Termination Agreement signed by the Player on 23 February 2008 and by the Respondent on 16 February 2008.

53. The Termination Agreement bears only the signatures of the Player and the

Respondent, but the Claimant was aware of the Termination Agreement. On 16 February 2008, Mr. Robert Jablan on behalf of the Claimant, wrote a letter to the Respondent, for the attention of Mr. Haris Papadopoulos, confirming the termination of the Agreement. This letter reads as follows:

> *"With this letter I confirm the decision of your player and our client Bruno Sundov to terminate the contract with your Club signed on 31st October 2007 effective as of today February 16th 2008 due to late salary payments and unpaid agent's fee which constitutes a breach of contract from your club's side. This decision was made after our repeated attempts to settle this matter in peaceful and professional manner. Furthermore, it is understood that as of today Bruno Sundov shall not be required to participate in any games or practices scheduled by your club or fulfil any obligations under his contract with your club. It is absolutely understood that Bruno Sundov will leave your club with an unconditional free agent status. In addition, your club is required to give Bruno Sundov his FIBA letter of Clearance in order for him to play basketball anywhere in the world he chooses. Furthermore, your club will have no rights over or with respect to Bruno Sundov, and your club will not be entitled to request or receive any payments pertaining to him playing basketball anywhere in the world in the future. […]"*

54. The Arbitrator finds that the Claimant has not waived its rights under the Agreement either explicitly or implicitly. Firstly, the Respondent did not bring forward any evidence indicating that the Player was authorized to waive the Claimant's rights under the Agreement. In addition, in its letter dated 16 February 2008 the Claimant did not consent to a waiver of its rights and claims under the Agreement by the Player. In addition, Claimant's letter of 16 February 2008 cannot be construed as expressing its consent to a waiver by the Player of the Claimant's rights and claims under the Agreement. That letter mainly addresses the status of the Player: since the Respondent was in breach of the Agreement, it no longer had rights over the Player, who in turn was no longer bound by the Agreement. Respondent's failure to pay the Agent Fee was mentioned, but not elaborated upon in that letter.

55. Thus, the Arbitrator finds that the Respondent has not provided any evidence to the effect that the Claimant consented to any waiver of its financial claims in the context of

the Termination Agreement of 16 February 2008, which was not signed by it. Therefore, the Termination Agreement did not modify Article 14 of the Agreement.

56. To sum up, the Arbitrator holds that the Claimant is entitled to the payment of the Agent Fee in accordance with the Agreement and that the Respondent has failed to make such payment.

7. Interest

57. The Claimant requests interests at the applicable rate starting from 7 November 2007 (the date of the Player's physical examination).

58. Payment of interest is a customary and necessary compensation for late payment and there is no reason why Claimant should not be awarded interest. In the absence of any agreement by the parties to the contrary, the Arbitrator holds that, in line with the constant jurisprudence of the FAT, an interest rate of 5% p.a. is reasonable and equitable in the present case.

59. Furthermore, the Arbitrator holds that the Claimant is entitled to interest as of 7 November 2007. In the Arbitrator's opinion, the relevant dates as regards interest on contractual payments are the dates on which the payments became due. According to Article 14 of the Agreement the Agent Fee was due *"upon the Player's passage (or deemed to have passed) of his physical examination"*. Therefore, the Respondent shall pay 5 % interest p.a. as of 8 November 2007 (i.e. the day after the Player's passage of the medical examination or the day after the Player is deemed to have passed such

examination) on the amount of EUR 9,900.00.

8. Costs

60. 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 communicated to the parties separately. Furthermore Article 19.3 of the FAT Rules provides that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

61. On 30 July 2009, considering that pursuant to Article 19.2 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", and 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", taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the FAT President determined the arbitration costs in the present matter at EUR 5,850.00.

62. In the present case, the costs shall be borne by the Respondent alone in line with Article 19.2 of the FAT Rules, as the Claimant has been awarded its claim in its entirety and there is no indication that either the financial resources of the parties or any other circumstance compels otherwise.

63. Moreover, the Arbitrator wishes to note that given the above allocation there is no need

to take into account the non-reimbursable handling fee when allocating the costs of the arbitration to the parties as provided for by Article 19.1(2) of the FAT Rules.

64. Given that the Claimant has paid the totality of the Advance on Costs of EUR 6,000.00 as fixed by the Arbitrator, the Arbitrator decides that:

(i) the FAT shall reimburse EUR 150.00 to the Claimant;

(ii) the Respondent shall pay to Claimant EUR 5,850.00, i.e. the difference between the costs advanced by the Claimant and the amount which is going to be reimbursed to it by the FAT.

(iii) Furthermore, the Arbitrator considers it adequate that the Claimant is entitled to the payment of a contribution towards its legal fees and other expenses (Article 19.3 of the FAT Rules). In the case at hand the payment by the Claimant of the non-reimbursable handling fee was not taken into account when allocating the costs of the arbitration. Therefore, the Arbitrator considers it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by the Claimant in connection with these proceedings. After having reviewed and assessed the submissions by the Claimant and having regard to the outcome of the proceedings, the Arbitrator fixes the contribution towards the Claimant's legal fees and expenses at half of the non-reimbursable fee, i.e. at EUR 1,500.

9. AWARD

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

1. **Basketball Club AEL Limassol shall pay to XL Basketball Agency EUR 9,900.00 together with 5% interest p.a. from 8 November 2007.**

2. **Basketball Club AEL Limassol shall pay to XL Basketball Agency EUR 5,850.00 as a reimbursement of the advance on the arbitration costs.**

3. **Basketball Club AEL Limassol shall pay to XL Basketball EUR 1,500.00 as a contribution towards XL Basketball's legal fees and expenses.**

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

Geneva, seat of the arbitration, 25 August 2009

Ulrich Haas
(Arbitrator)

FIBA

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."