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FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0063/09 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Charron Fisher, 6522 Woodland Ave, Pennsauken, NJ 08110, USA

- Claimant 1 -

and

Entersport Management Inc., 128 Heather Drive, New Canaan, CT 06840, USA

- Claimant 2 -

jointly referred to as "the Claimants"

both represented by Mr. Andrea Raffaelli, Attorney at law, Via Paolo Sarpi 12, 20154 Milan, Italy

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FIBA Arbitral Tribunal (FAT)

vs.

KK Vojvodina Srbijagas, Maksima Gorkog 24, 21000 Novi Sad, Serbia

- Respondent -

1. The Parties

1.1. The Claimants

1. Mr. Charron Fisher (hereinafter "Mr. Fisher" or "Claimant 1") is a professional basketball player of American nationality. Entersport Management Inc. (hereinafter "Entersport" or "Claimant 2") is a management company that represents professional basketball players worldwide, among others Claimant 1.

1.2. The Respondent

2. KK Vojvodina Srbijagas (hereinafter "the Club" or "Respondent") is a professional basketball club with its seat in Novi Sad, Serbia. It is domiciled at Maksima Gorkog 24, 21000 Novi Sad, Serbia. Respondent is not represented by counsel.

2. The Arbitrator

3. On 4 November 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed



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Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

4. On 4 November 2009, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.
5. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background Facts

6. On 3 October 2008, Claimant 1 and Respondent signed a so-called "Standard Player's Contract" (hereinafter referred to as the "Agreement") according to which Claimant 1 was to be employed by Respondent for the basketball season 2008/2009. Pursuant to the Agreement, Respondent undertook to pay a total Base Salary of USD 94,000.00 to Claimant 1, payable in monthly installments as follows (paragraph 2 of the Agreement):

"\$4,000 upon Player's arrival and passing his physical (sic)

\$4,000 on October 31, 2008

\$8,000 on November 30, 2008

\$8,000 on December 31, 2008

\$14,000 on January 31, 2009

\$14,000 on February 28, 2009



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\$14,000 on March 31, 2009

\$14,000 on April 30, 2009

\$14,000 on May 31, 2009”

7. Additionally, Claimant 1 and Respondent agreed on different bonuses in case the team would meet certain defined sporting goals and on certain benefits in connection with transportation, housing, food and medical issues.
8. In addition it was agreed that Respondent would pay Claimant 2 a fee of USD 9,400.00 for the negotiation of the Agreement, payable no later than 15 November 2008 (hereinafter referred to as the “Agent Fee”).
9. After the conclusion of the Agreement, Respondent paid only a total amount of USD 29,000.00 (instead of USD 94,000.00) to Claimant 1. Furthermore, Respondent failed to pay the Agent Fee of USD 9,400.00 to Claimant 2.
10. On 4 September 2009, Mr. Andrea Raffaelli, the legal counsel of the Claimants, sent a letter to Respondent asking for the payment of USD 65,000.00 to Claimant 1 and of USD 9,400.00 to Claimant 2, and reserving the right to initiate legal proceedings.
11. Besides the amount of USD 29,000.00, no further payments have been made to date by Respondent.

3.2. The Proceedings before the FAT

12. On 21 October 2009, the Claimants filed a Request for Arbitration together with four exhibits in accordance with the FAT Rules.



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13. By email and letter dated 9 November 2009, the FAT Secretariat confirmed receipt of the Request for Arbitration. In the said letter, the FAT Secretariat also confirmed the payment of the non-reimbursable handling fee of EUR 3,000.00 by Claimant 2 and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the FAT Rules until 1 December 2009 (hereinafter the "Answer"). The letter also requested the Parties to pay the following amounts as an Advance on Costs by no later than 24 November 2009:

<i>"Claimant 1 (Mr. Fisher)</i>	<i>EUR 3,000</i>
<i>Claimant 2 (Entersport)</i>	<i>EUR 1,000</i>
<i>Respondent (KK Vojvodina Srbijagas)</i>	<i>EUR 4,000"</i>

The Claimants paid their share on the Advance on Costs on 23 November 2009.

14. Respondent failed to submit an Answer. This fact as well as Respondent's failure to pay the Advance on Costs was conveyed to the Parties by the FAT Secretariat in a letter dated 9 December 2009. In the same letter, the FAT Secretariat informed the Parties of the Arbitrator's Order that according to Article 9.3 of the FAT Rules, Claimants had the right to pay Respondent's share of the Advance on Costs in order to ensure the continuation of the arbitration proceedings. The time limit for such payment was set on 18 December 2009.
15. On 17 December 2009, the Claimants paid Respondent's share of the Advance on Costs in the amount of EUR 4,000.00.
16. By letter dated 7 January 2010 the Arbitrator declared the proceedings closed and invited the Parties to submit their detailed accounts of costs until 15 January 2010.



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17. By email dated 11 January 2010, the Claimants submitted the following account on costs:

“Detailed account of the costs incurred in by the Claimants in relation to the proceedings as of January 11, 2010

<i>Expense</i>	<i>Amount</i>
<i>Counsel's Fees</i>	<i>€ 2,500.00</i>
<i>FAT Handling Fee</i>	<i>€ 3,000.00</i>
<i>FAT Fees due by the Claimants</i>	<i>€ 4,000.00</i>
<i>Advance of Respondent's FAT Fees</i>	<i>€ 4,000.00</i>
<i>TOTAL</i>	<i>€ 13,500.00</i>

18. Respondent failed to submit an account of costs.
19. Since the Claimants explicitly requested the FAT not to hold a hearing and considering Respondent's failure to engage in the proceedings, the Arbitrator decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions on file.

4. The Parties' Submissions

4.1. Summary of the Claimants' Submissions

20. Claimant 1 claims the payment of USD 65,000.00 as outstanding salaries for the 2008/2009 season. This amount of USD 65,000.00 corresponds to the difference between the full “Base Salary” for the season 2008/2009 (USD 94,000.00) and the part of the salary which Claimant 1 already received from Respondent (USD 29,000.00). Claimant 1 also claims interests of 5% per annum in accordance with the Swiss statutory rate or at a different rate deemed appropriate by the Arbitrator *ex aequo et*



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bono, from 31 May 2009 until the full and unconditional payment of the claimed amount.

21. Claimant 2 asks for the payment of the Agent Fee in the amount of USD 9,400.00 plus interests of 5 % per annum in accordance with the Swiss statutory rate or at a different rate deemed appropriate by the Arbitrator *ex aequo et bono*, from 15 November 2008 until the full and unconditional payment of the Agent Fee.
22. Furthermore, the Claimants request the reimbursement of their expenses and costs incurred in connection with the arbitration proceedings.
23. The Claimants state that Mr. Marc Fleisher (President of Claimant 2) addressed several requests for payments to Respondent and that the latter admitted in its emails dated 5 and 11 June 2009 that it had failed to pay the Claimants.

4.2. The Claimants' Request for Relief

24. The Claimants request the FAT:

"1) to establish that the Respondent is in default with respect to its obligations deriving from the Agreement;

2) to condemn the Respondent to pay:

- (i) in favour of Fisher the amount of **65,000.00 US Dollars**, plus the interests at the rate of 5 % per annum, or at the different rate deemed appropriate by the Arbitrator *ex aequo et bono*, as calculated under point 1.2(d) preceding. Payments shall be made on the following bank account: _____;*
- (ii) in favour of Entersport the amount of **9,400.00 US Dollars**, plus the interests at the rate of 5 % per annum, or at the different rate deemed appropriate by the Arbitrator *ex aequo et bono*, as calculated under point 1.2(e) preceding. Payments shall be made on the following bank account: _____;*



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- 3) *to condemn the Respondent to pay all expenses and costs, including the costs for the arbitration and Counsels' fees and costs, incurred by the Claimants in connection with the proceeding.*"

4.3. Summary of Respondent's Submissions

25. Despite several invitations, Respondent neither engaged in the arbitration proceedings at hand nor made any submissions.

5. Jurisdiction

26. 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).
27. The jurisdiction of the FAT presupposes the arbitrability of the dispute as well as the existence of a valid arbitration agreement between the parties.

6. Arbitrability

28. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and



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is thus arbitrable within the meaning of Article 177 (1) PILA.¹

7. Formal and substantive validity of the arbitration agreement

7.1. In General

29. 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 concluded in writing, by telegram, telex, telefax or any other means of communication which allow proof of the agreement by text.

2 Furthermore, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."

30. The Arbitrator finds that the jurisdiction of the FAT over the dispute between the Claimants and Respondent results from paragraph 10 of the Agreement, which reads as follows:

"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.

Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS),

¹ Decision of the Swiss Federal Tribunal 4P.230/2000 dated 7 February 2001, cons. 1, reported in ASA Bulletin 2001, p. 523 et seq., with reference to the decision of the Swiss Federal Tribunal dated 23 June 1992, BGE 118 II 353, 356, cons. 3b.



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*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 Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.
The decisions of FAT and CAS upon appeal shall decide the dispute ex aequo et bono.”*

7.2. Regarding Claimant 1

31. The Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178 (1) PILA.
32. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178 (2) PILA).
33. The jurisdiction of FAT over Claimant 1's claim arises from the Agreement. The wording “[a]ny dispute arising from or related to the present contract (...)” in paragraph 10 of the Agreement clearly covers the present dispute.²
34. The Arbitrator thus finds that he has jurisdiction to decide the claim of Claimant 1.

7.3. Regarding Claimant 2

35. In the context of the formal validity of the arbitration agreement, the question has to be examined whether the arbitration agreement covers not only Claimant 1 and

² See for instance BERGER/ KELLERHALS: Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 466.



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Respondent as the signatories of the Agreement but also Claimant 2.

36. While the doctrine is discordant as to the question of the formal requirements for the extension of an arbitration agreement,³ the Swiss Federal Tribunal has adopted a liberal approach.⁴ In its decision dated 16 October 2003 (BGE 129 III 727), the Swiss Federal Tribunal stated that while the validity of the arbitration agreement between the initial parties was subject to the formal requirements of Article 178 (1) PILA, the validity of the extension of the arbitration agreement to non-signatory parties did not have to comply with these formal requirements.⁵ Therefore, once an arbitration agreement complies with the statutory requirements as to form with respect to its original signatories, the extension of that arbitration agreement to other parties does not need to satisfy such requirements.⁶
37. As stated above (para. 31), the arbitration agreement fulfills the formal requirements of Article 178 (1) PILA. Therefore, the arbitration agreement is formally valid and binding between Claimant 1 and Respondent as signatories, as well as towards Claimant 2 as a non-signatory to the Agreement.

3 BERGER/KELLERHALS: *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Bern 2006, N 520 and FN 400 and 401, with references to BLESSING: *Introduction to Arbitration – Swiss and International Perspectives*, Basel 1999, N 504; POUURET: *L'extension de la clause d'arbitrage: approches française et suisse*, in: *Journal du droit International (JDI)*, Clunet, Band 122/1995, p. 893 ff., p. 904; POUURET/BESSON: *Droit comparé de l'arbitrage international*, Zurich/Basel/Geneva 2002, N 258, 260, 264 with further references; SCHWEIZER, in: *SZIER* 4/2002, p. 587.

4 BERGER/KELLERHALS: *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Bern 2006, N 520 with further references in FN 402.

5 Decision of the Swiss Federal Tribunal dated 16 October 2003, BGE 129 III 727, 735, cons. 5.3.1; PHILIPP FISCHER: *When can an arbitration clause be binding upon non-signatories under Swiss law?*, in: *Jusletter* of 4 January 2010.

6 PHILIPP FISCHER: *When can an arbitration clause be binding upon non-signatories under Swiss law?*, in: *Jusletter* of 4 January 2010.



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38. Particularly, the agreement can be deemed to validly extend to Claimant 2 by taking the parties' conduct into consideration, including the fact that the Agreement, in its para. 13 (see para. 57 of this award), set forth obligations for Respondent towards Claimant 2 (payment of the Agent fee). Moreover, the Arbitrator regards the arbitration agreement as concluded between Claimant 1 and Respondent in favour of a third party, i.e. Claimant 2. The conclusion of an arbitration agreement in favour of a third party implies the application by analogy of Article 112 of the Swiss Code of Obligations and is undisputedly acknowledged⁷. As mentioned above (para. 32), there is no other indication in the file which could cast doubt on the substantive validity of the arbitration agreement under Swiss law (Article 178 (2) PILA).
39. The Arbitrator thus finds that he has jurisdiction not only over Claimant 1 and Respondent but also over Claimant 2 – all the more as no objection regarding the jurisdiction of the FAT has been raised by Respondent.

8. Other Procedural Issues

40. Article 14.2 of the FAT Rules, which the Parties have declared to be applicable in the Agreement, specifies that “the Arbitrator may nevertheless 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 of one of the parties is in accordance with Swiss arbitration law⁸ and the practice of the FAT.⁹ However, the

⁷ BERGER/ KELLERHALS: Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 514.

⁸ Decision of the Swiss Federal Tribunal dated 26 November 1980, in: Semaine Judiciaire (SJ) 1982, S. 613 et seq., p. 621; KAUFMANN-KOHLER/RIGOZZI, Arbitrage international. Droit et pratique à la lumière de la



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Arbitrator must make every effort to allow the defaulting party to assert its rights.

41. This requirement is met in the current case. Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator, in line with the relevant rules. It was also given ample opportunity to respond to the Claimants' Request for Arbitration. However, Respondent has chosen not to respond at all. In light of these circumstances, the Arbitrator considers himself fit to proceed with the arbitration proceedings and to deliver the award.

9. Discussion

9.1. Applicable Law – *ex aequo et bono*

42. 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

LDIP, Bern 2006, N 483; LALIVE/POUDRET/REYMOND: Le droit de l'arbitrage interne et international en Suisse, Lausanne 1989, Art. 182 PILA N 8; RIGOZZI: L'Arbitrage international en matière de sport, Basel 2005, N 898; SCHNEIDER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Art. 182 PILA N 87; VISCHER, in: Zurich Commentary to the PILA, 2nd ed., Zurich/Basel/Geneva 2004, Art. 182 IPRG N 29.

⁹ See for instance FAT Decision 0001/07 dated 16 August 2007, Ostojic and Raznatovic vs. PAOK KAE; FAT Decision 0018/08 dated 10 February 2009, Nicevic vs. Beşiktaş; FAT Decision 0020/08 dated 19 March 2009, Dimitropoulos vs. Athlitiki Enosis Konstantinoupoleos; FAT Decision dated 11 May 2009, Sakellariou and Dimitropoulos vs. S.S. Felice Scandone Spa.; FAT Decision 0030/09 dated 12 May 2009, Vujanic vs. Enterprise Men's Basketball Club "Dynamo" Moscow; FAT Decision 0031/09 dated 12 May 2009, Misanovic and Ristanovic vs. Enterprise Men's Basketball Club "Dynamo" Moscow; FAT Decision 0010/08 dated 16 June 2009, Grgurevic vs. AEP Olympias Patras; FAT Decision 0043/09 dated 13 October 2009, Gomis vs. Women's Basketball Club Fenerbahçe.



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may authorize the arbitrators to decide "*en équité*", as opposed to a decision according to the rules of law referred to in Article 187 (1). Article 187 (2) PILA is generally translated into English as follows:

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

43. 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."

44. Paragraph 11 of the Agreement states:

"This Agreement shall be governed by the laws of Switzerland."

45. Thus, the parties to the Agreement chose Swiss law as the law applicable to the Agreement, while the arbitration agreement in paragraph 10 of the Agreement specifically provides that "the decisions of the FAT and CAS upon appeal shall decide the dispute *ex aequo et bono*." The two provisions of paragraph 10 and 11 of the Agreement seem to contradict each other. Consequently, the question arises whether Swiss law or the principles of *ex aequo et bono* are applicable to the merits of the present dispute.

46. Neither the Agreement nor the Request for Arbitration contains any indication that the Parties have made any specific legal considerations with respect to the application of Swiss law. The Request for Arbitration refers to Swiss law only in the context of the Claimants' claim for interests. But even in connection with their claim for interests, the Claimants expressly declared that interests could be assessed according to *ex aequo et bono* considerations as an alternative to Swiss law. In view of these circumstances, the Arbitrator finds that the merits of this dispute shall be decided *ex aequo et bono*.



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9.2. The statutory concept of *ex aequo et bono* arbitration

47. 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*¹⁰ (Concordat),¹¹ 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.”*¹²

48. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand”.*¹³

49. This is confirmed by Article 15.1 of the FAT Rules *in fine* according to which the arbitrator applies “general considerations of justice and fairness without reference to any particular national or international law”.

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

¹⁰ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

¹¹ KARRER, in: *Basel commentary to the PILA*, 2nd ed., Basel 2007, Art. 187 PILA N 289.

¹² JdT (*Journal des Tribunaux*), III. Droit cantonal, 3/1981, p. 93 (free translation).

¹³ POUURET/BESSON, *Comparative Law of International Arbitration*, London 2007, N 717, pp. 625-626.



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10. Findings

10.1. The Claim of Claimant 1 in the amount of USD 65,000.00

51. The Claimants request the FAT to condemn Respondent to pay the amount of USD 65,000.00 in favour of Claimant 1.

52. Paragraph 2 of the Agreement reads:

“The guaranteed net Base Salary (...) is vested in and owing to the Player upon the completion of the execution of this Agreement and is not contingent upon anything other than the Player passing his physical examination pursuant to paragraph 6 (...).”

53. In the Request for Arbitration, the Claimants submit that Respondent has made payments of USD 29,000.00 out of the total debt of USD 94,000.00. Consequently, according to the Claimants' submission, there remains a shortfall of USD 65,000.00.

54. There are no circumstances which would create any doubts as to the validity and enforceability of the Agreement. Since Claimant 1 was a regular player with Respondent's team during the season 2008/2009 (as found out by publicly available information¹⁴), there can be no doubt that Claimant 1 successfully passed the physical examinations and that the condition under which the Base Salary would become due was met. Furthermore, it follows from the Agreement that the debt of USD 94,000.00 in total is due to be paid in its entirety by Respondent. In addition, Claimant 1 through his agent, Claimant 2, repeatedly requested Respondent to pay the Base Salary and there is no indication that Respondent fully complied with its obligation. Rather, the emails

¹⁴ See <http://www.eurobasket.com/player.asp?Cntry=Estonia&PlayerID=72714&Stats=2009> and <http://www.adriaticbasket.info/w2/club.php?id=24&sez=08> (last visited on 16 February 2010).



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dated 5 and 11 June 2009 show that Respondent knew of its payment obligation and acknowledged it, but did not fulfill it.

55. The Arbitrator finds therefore that Respondent is obliged to pay the outstanding amount of USD 65,000.00 to Claimant 1. The Arbitrator's conclusion rests on the record as it stands and not on the mere fact that Respondent has defaulted. Under these circumstances, the Arbitrator does not deem it necessary to call for further evidence.

10.2. The Claim for the Agent Fee (Claimant 2)

56. The Claimants request the FAT to condemn Respondent to pay the Agent Fee in the amount of USD 9,400.00 in favour of Claimant 2.

57. Paragraph 13 of the Agreement states:

"Club agrees as a material term of this Contract that it will pay Player's Agent Entersport a fee of USD 9,400 for negotiating this Contract between the Player and Club. Said fee shall be net of Serbian tax and shall be paid no later than November 15, 2008. (...) Failure of Club to pay the agent fees stated herein within 30 days shall be a breach of this Contract and Player may terminate this Contract with no obligation to return the monies previously paid to Player. In addition Player may refuse to report to Club without penalty until such time as agent has received his fee."

58. The Claimants contend that Respondent failed to pay the Agent's Fee altogether.
59. As already stated above (para. 54) in connection with the claim for USD 65,000.00, there are no circumstances which would create any doubts as to the validity and enforceability of the Agreement. Furthermore, it is evident that the Agent Fee was owed, since Respondent acknowledged its duty and failure in fulfilling it in two emails sent to Mr. Marc Fleisher on 5 and 11 June 2009. Moreover, it is determined that



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according to the Agreement, the debt of USD 9,400.00 is due to be paid in its entirety by Respondent. Claimant 2 asked Respondent several times to pay the Agent Fee and there is no indication that Respondent complied with its obligation.

60. Thus, the Arbitrator finds that Respondent is also obliged to pay the amount of USD 9,400.00 to Claimant 2. The Arbitrator's conclusion rests on the record as it stands and not on the mere fact that Respondent has defaulted. Under these circumstances, the Arbitrator does not deem it necessary to call for further evidence.

10.3. Interest

61. On the claimed amounts, the Claimants request interests of 5 % per annum, or at a different rate deemed appropriate by the Arbitrator *ex aequo et bono*, starting from 1 June 2009 (concerning the claim for USD 65,000.00) and 16 November 2008 (concerning the claim for the Agent Fee) respectively, until the full and unconditional payment of such amounts.
62. Payment of interests is a customary and necessary compensation for late payment and there is no reason why Claimant 1 should not be awarded interests. In line with the constant jurisprudence of the FAT, the Arbitrator holds that an interest rate at 5 % p.a. is reasonable and equitable in the present case. Besides, the Arbitrator finds that 1 June 2009 (concerning the claim for USD 65,000.00) and 16 November 2008 (concerning the claim for the Agent Fee) respectively are appropriate dates for the interests to become payable.



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11. Costs

63. 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 states that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
64. The Claimants' arbitration costs include the non-reimbursable handling fee of EUR 3,000.00, counsel fees (EUR 2,500.00), the Advance on Costs paid by the Claimants (EUR 4,000.00) as well as the Advance on Costs of Respondent, also paid by the Claimants (EUR 3,997.28). Such costs amount to EUR 13,497.28 in total.
65. On 12 February 2010, 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 6,250.00.
66. In the present case, the costs shall be borne by Respondent alone in line with Article 19.3 of the FAT Rules, as the Claimants have been awarded their claims in their entirety and there is no indication that either the financial resources of the Parties or any other circumstance compel otherwise.



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67. Given that the Claimants paid the totality of the Advance on Costs of EUR 7,997.28, the Tribunal decides that:
- (i) The FAT shall reimburse EUR 1,747.28 to the Claimants and
 - (ii) Respondent shall pay the difference between the costs advanced by the Claimants and the amount which is going to be reimbursed to them by the FAT, i.e. EUR 6,250.00 (EUR 7,997.28 – EUR 1,750.00).
 - (iii) Furthermore, the Arbitrator considers it adequate that the Claimants are entitled to the payment of a contribution towards their legal fees and other expenses (Article 19.3. of the FAT Rules). The Arbitrator holds it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by the Claimants in connection with these proceedings. After having reviewed and assessed all the circumstances of the case at hand, the Arbitrator fixes the contribution towards the Claimants' legal fees and expenses at EUR 5,500.00.



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12. AWARD

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

- 1. KK Vojvodina Srbijagas is ordered to pay to Mr. Charron Fisher the amount of USD 65,000.00 together with interests of 5 % p.a. from 1 June 2009.**
- 3. KK Vojvodina Srbijagas is ordered to pay to Entersport Management Inc. the amount of USD 9,400.00 together with interests of 5 % p.a. from 16 November 2008.**
- 4. KK Vojvodina Srbijagas is ordered to pay EUR 6,250.00 to Mr. Charron Fisher and Entersport Management Inc. as a reimbursement of the advance of arbitration costs.**
- 5. KK Vojvodina Srbijagas is ordered to pay to Mr. Charron Fisher and Entersport Management Inc. the amount of EUR 5,500.00 as a reimbursement of their legal fees and expenses.**
- 6. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 19 February 2010

Stephan Netzle
(Arbitrator)



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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."