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**FIBA Arbitral Tribunal (FAT)**

## **ARBITRAL AWARD**

**(0072/09 FAT)**

rendered by

**FIBA ARBITRAL TRIBUNAL (FAT)**

**Mr. Raj Parker**

in the arbitration proceedings

**Mr. Andrea Mazzon**, Via Parolari 11/a, 30174 Zelarino, Venezia, Italy.

**- Claimant 1 -**

**Mr. Elias Diamantopoulos**, P.O. Box 70676, Ano Glyfada, 166 06, Athens, Greece.

**- Claimant 2 -**

**Mr. Dario Santrolli**, Studio Legale, Via Marazzani 18, 27029, Vigevano PV, Italy.

**- Claimant 3 -  
together "the Claimants"**

vs.

**KAE Aris Thessaloniki B.C.**, Grigoriou Lambraki 2, 54636 Thessaloniki, Greece.

**- Respondent -**



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### **1. The Parties**

#### **1.1. The Claimants**

1. Andrea Mazzon (hereinafter "Claimant 1" or the "Coach") is an Italian citizen and a professional basketball Coach. He is represented by Mr. Solly Laniado of Zysman, Aharoni, Gayer & Ady Kaplan & Co., 41-45 Rothschild Blvd, Beit Zion, Tel-Aviv 65784, Israel.
2. Elias Diamantopoulos (hereinafter "Claimant 2") is a professional basketball agent. He is also represented by Mr. Solly Laniado of Zysman, Aharoni, Gayer & Ady Kaplan & Co.
3. Dario Santrolli (hereinafter "Claimant 3") is a professional basketball agent. He is also represented by Mr. Solly Laniado of Zysman, Aharoni, Gayer & Ady Kaplan & Co.

#### **1.2. The Respondent**

4. KAE Aris Thessaloniki B.C. (hereinafter the "Respondent" or the "Club") is a Greek basketball club. It is domiciled at Grigoriou Lambraki 2, 54636 Thessaloniki, Greece. The Respondent is represented by Prof. Dr. Georgios Archaniotakis, attorney at law in Thessaloniki, Greece.



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### 2. The Arbitrator

5. On 12 January 2010, the President of the FIBA Arbitral Tribunal (hereinafter the "FAT") appointed Raj Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").
6. By email dated 13 January 2010, 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

7. On 6 June 2008 the Coach and the Club signed an employment contract (hereinafter, the "First Contract"). The First Contract contains, among others, the following provisions:

*"1) The COMPENSATION for each season will consist of:*

**SEASON 2008-2009:**

A) 215,000. Euros	Two Hundred Ten Thousand Euros	Total Salary 2008-2009 BONUSES 2008-2009
B) 88,000. Euros	Eighty Eight Thousand in Euros	
20,000. Euros	For winning the Greek Championship	
5,000. Euros	To qualify for the Greek League Finals	
5,000. Euros	For winning the Greek Cup	
5,000. Euros	To qualify for the finals in the Greek Cup	



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30,000. Euros To qualify for ULEB Euro League Championship  
 15,000. Euros For winning the ULEB Cup League Championship  
 5,000. Euros For qualifying for the final four in the ULEB Cup League  
 3,000. Euros For qualifying for the final eight in the ULEB Cup League

**PAYMENT SCHEDULE 2008-2009**

21,500. Euros	Twenty One Thousand Five Hundred Euros	August 30, 2008
21,500. Euros	Twenty One Thousand Five Hundred Euros	September 30, 2008
21,500. Euros	Twenty One Thousand Five Hundred Euros	October 30, 2008
21,500. Euros	Twenty One Thousand Five Hundred Euros	November 30, 2008
21,500. Euros	Twenty One Thousand Five Hundred Euros	December, 30, 2008
21,500. Euros	Twenty One Thousand Five Hundred Euros	January 30, 2009
21,500. Euros	Twenty One Thousand Five Hundred Euros	February 30, 2009
21,500. Euros	Twenty One Thousand Five Hundred Euros	March 30, 2009
21,500. Euros	Twenty One Thousand Five Hundred Euros	April 30, 2009
21,500. Euros	Twenty One Thousand Five Hundred Euros	May 30, 2009

**SEASON 2009-2010**

C) 235,000. Euros	Two Hundred Thirty Thousand Euros	Total Salary 2009-2010
D) 105,000. Euros	One Hundred Five Thousand in Euros	BONUSES 2009-2010
20,000. Euros	For winning the Greek Championship	
5,000. Euros	To qualify for the Greek League Finals	
5,000. Euros	For winning the Greek Cup	
5,000 Euros	To qualify for the finals in the Greek Cup	
30,000. Euros	To qualify for ULEB Euroleague 2010-2011	
25,000. Euros	For winning the ULEB Cup or Euroleague Championship	
5,000. Euros	For qualifying for the final four in the ULEB Cup	
10,000. Euros	For qualifying for the final four in the Euroleague	
10,000. Euros	For qualifying for the final four in the Euroleague	

**PAYMENTS SCHEDULE 2009-2010**

23,500. Euro	Twenty Three Thousand Five Hundred Euros	August 30, 2009
23,500. Euro	Twenty Three Thousand Five Hundred Euros	September 30, 2009
23,500. Euro	Twenty Three Thousand Five Hundred Euros	October 30, 2009
23,500. Euro	Twenty Three Thousand Five Hundred Euros	November 30, 2009
23,500. Euro	Twenty Three Thousand Five Hundred Euros	December 30, 2009
23,500. Euro	Twenty Three Thousand Five Hundred Euros	January 30, 2010



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23,500. Euro	Twenty Three Thousand Five Hundred Euros	February 30, 2010
23,500. Euro	Twenty Three Thousand Five Hundred Euros	March 30, 2010
23,500. Euro	Twenty Three Thousand Five Hundred Euros	April 30, 2010
23,500. Euro	Twenty Three Thousand Five Hundred Euros	May 30, 2010

[...]

#### **4) GUARANTEED NO-CUT CONTRACT**

*This Contract is a no cut, GUARANTEED contract. The Club does not have the right to release the coach without paying him the rest of his compensation in case of insufficient skill or illness and that it can be terminated only pursuant to a mutual accord of the parties involved in this Agreement.*

[...]

#### **7) AGENT FEE**

*The CLUB will pay the AGENT FEE of 10%, NET of all GREEK taxes, to Mr Dario Santrolli and Diamond Sports, exclusive of the COACH."*

8. On 3 October 2009, the Coach met with the president of the Club and following the meeting, ceased coaching the Club.

### **3.2. The Proceedings before the FAT**

9. On 1 December 2009 the Claimant filed a Request for Arbitration in accordance with the FAT Rules.
10. By letter dated 15 January 2010, the FAT Secretariat fixed a time limit until 8 February 2010 for the Respondent to file the Answer to the Request for Arbitration. By the same letter, and with a time limit for payment until 1 February 2010, the following amounts were fixed as the Advance on Costs:



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<i>"Claimant 1 (Mr. Mazzon)</i>	<i>EUR 4,000</i>
<i>Claimant 2 (Mr. Diamantopoulos)</i>	<i>EUR 1,000</i>
<i>Claimant 3 (Mr. Santrolli)</i>	<i>EUR 1,000</i>
<i>Respondent (Aris BC)</i>	<i>EUR 6,000"</i>

11. By letter dated 1 March 2010, the Arbitrator extended the time limit for payment of the Advance on Costs until 8 March 2010.
12. The Claimants paid their share of the Advance on Costs on 4 March 2010. The Respondent failed to pay its share of the Advance on Costs and so, on 17 March 2010, the Claimants paid the Respondent's share of the Advance on Costs, in accordance with Article 9.3 of the FAT Arbitration Rules.
13. On 28 February 2010 the Respondent submitted its Answer.<sup>1</sup> On 3 March 2010 the Claimants made a request to the Arbitrator that they be permitted to respond to the Answer. On 31 March 2010 the Arbitrator issued a Procedural Order which set out certain questions for the Claimants to answer.
14. The Arbitrator issued a further Procedural Order by letter dated 26 May 2010, which contained questions for the Claimants and the Respondent to answer.
15. Since none of the Parties filed an application for a hearing, the Arbitrator decided, in accordance with Article 13.1 of the FAT Rules, not to hold a hearing and to deliver the

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<sup>1</sup> On 28 January 2010 the Respondent sent a letter by fax to the FAT, objecting to the FAT's jurisdiction to hear the claim and requesting the President of the FAT to dismiss the claim. The FAT responded on 2 February 2010 stating, *inter alia*, that the President of the FAT had confirmed that the FAT had *prima facie* jurisdiction to hear the claim and that the issue of jurisdiction and all other issues arising from the request for arbitration at hand should be further dealt with and decided by the appointed Arbitrator.



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award on the basis of the written submissions of the Parties.

16. By Procedural Order dated 3 August 2010 the Arbitrator closed the proceedings, subject to the Parties submitting their accounts of costs by 13 August 2010.
17. On 5 August 2010, the Claimants submitted an account for legal costs of EUR 36,140.00, inclusive of the non-reimbursable fee and advance on FAT costs.
18. The Respondent did not submit an account of legal costs.

### **4. The Parties' Submissions**

#### **4.1. The Claimants' Submissions**

19. Claimant 1 claims that the Club terminated the First Contract unilaterally and without just cause on 3 October 2009. Claimant 1 claims that, as a result, all sums payable under the First Contract are due pursuant to clause 4 of the First Contract (as quoted in paragraph 7 above). Claimant 1 claims that such sums total EUR 201,750.00, representing Claimant 1's salary for the 2009/10 season of EUR 235,000.00, minus EUR 15,000.00 which has already been paid by the Respondent and minus EUR 18,250.00 which Claimant 1 earned working for his new club in the remainder of the 2009/2010 season.
20. The Claimants claim that the Respondent's actions, in unilaterally terminating the First Contract, caused severe damage to Claimant 1's reputation. Claimant 1 claims EUR



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150,000.00 in damages for the harm to his reputation.

21. The Claimants also claim that the Respondent has failed to pay agent fees of EUR 23,500.00 for Claimant 2 and Claimant 3, and that such fees are now due.
22. Finally, the Claimants claim interest at a rate of 5% per year on all due sums and reimbursement of all legal costs and expenses.

### 4.2. The Respondent's Submissions

23. The Respondent has submitted a contract between the Player and the Club dated 28 August 2008 (hereinafter the "Second Contract"). The Respondent claims that the Second Contract replaced the First Contract and had the effect of annulling the First Contract.
24. The Respondent submits that FAT does not have jurisdiction to hear disputes between the Parties because the Second Contract is the agreement which governs relations between the Parties and the Second Contract grants jurisdiction to the Civil Court of Thessaloniki.
25. The Respondent further submits that proceedings in relation to the dispute between the Club and the Coach had already been initiated by the Respondent in the Civil Court of Thessaloniki, Greece, before the Claimants filed their Request for Arbitration and so the proceedings before FAT should be stayed until judgment in the Greek proceedings is rendered.
26. Additionally, the Respondent submits that, in any event, it did not unilaterally terminate



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its contractual relationship with the Claimants, and instead, Claimant 1 mutually agreed with the Club to resign at the meeting on 3 October 2009. The Respondent claims that Claimant 1 agreed to sign a termination agreement the following week, under which the Respondent would pay to Claimant 1 EUR 38,000.00. The Respondent states that this sum comprises EUR 36,000.00 in accrued wages for July, August, September and October 2009 and EUR 2,000.00 as a contribution towards the expenses of the Coach in moving to Italy. The Respondent states that Claimant 1 did not attend the Club's training session following the meeting on 3 October 2009, nor did he attend the Club to sign the termination agreement.

### 5. Jurisdiction

#### 5.1. The jurisdiction of the FAT

27. 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 Federal Statute on Private International Law (PILA).
28. The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
29. As stated in paragraphs 23 to 24 above, the Respondent has challenged the jurisdiction of the FAT. The Respondent claims that the Second Contract has replaced the First Contract and that the Second Contract grants jurisdiction to the Civil Court of



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Thessaloniki and not to the FAT. The Respondent argues that the Second Contract replaced the First Contract because it was signed several weeks after the Second Contract. The Claimants claim that they had no knowledge of the Second Contract and that although Claimant 1 may have signed it, he was unaware of its contents. The Claimants argue that it was not intended that the Second Contract replace the First Contract.

30. The fourth condition of the First Contract states:

*“4) 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 Sport (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 Sport (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.”*

31. The Second Contract states at article 7:

*“7<sup>th</sup> The contracting parties agree and accept that any difference of financial or other nature that may occur hereof, will be settled by the Civil Court of Thessaloniki with subject matter jurisdiction.”*

32. The Second Contract grants jurisdiction to the Civil Court of Thessaloniki. In order to ascertain whether or not the FAT has jurisdiction, it must first be determined whether the Second Contract annuls and replaces the First Contract for the purposes of this dispute.



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33. In relation to the validity of the First Contract, the Arbitrator notes that the fifth condition of the First Contract states:

*“5) This contract is the controlling Agreement and shall supersede any and all other agreements in the event of a dispute, and shall be an inseparable part of the contracts regulated by the Federation in Greece. Any additional unified contract that is filed with the Federation in Greece shall incorporate all terms herein and shall not include any additional terms that change or limit the Coach’s rights herein. The Club is obliged to register this agreement with the basketball Federation in Greece. In case the CLUB does not register this contract with the Federation, the Club is under the obligation to compensate all losses of the COACH arising from the failure of the Club to register this Agreement.”*

34. The Respondent has provided the FAT with a letter from the Hellenic Basketball Federation which states that the Second Contract was *“legally drawn up and submitted to the provided authorities according to the corresponding provisions of the sport’s legal framework in force and replaced a previous one having been drawn up on 06.06.08.”* The Arbitrator finds that the Second Contract is indeed an *“additional unified contract that is filed with the Federation in Greece”* for the purposes of the fifth condition of the First Contract. The effect of this is that the Second Contract is unable to change or limit any of the Coach’s rights set out in the First Contract. One such right is the Coach’s right to submit disputes between the Claimants and the Respondent to the FAT. In view of the wording of the fifth condition of the First Contract, this right is unaltered by the Second Contract and so the Arbitrator finds that the FAT does have jurisdiction to hear the present dispute between the Claimant and the Respondent.
35. A further objection that the Respondent has raised in relation to the FAT’s ability to hear this dispute is that concurrent proceedings had been filed in the Greek Court at the time when the Claimants filed their Request for Arbitration. The issue of *lis pendens* must be examined in the context of Article 186 PILA, which states:



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*"1 The arbitral tribunal shall itself decide on its jurisdiction.*

*1bis It shall decide on its jurisdiction notwithstanding an action on the same matter between the same parties already pending before a State Court or another arbitral tribunal, unless there are serious reasons to stay the proceedings.*

[...]"

36. The Arbitrator acknowledges that there is an action relating to the same subject-matter as the present dispute already pending before a state court. However, noting in particular Claimants 2 and 3 are not parties to the proceedings in the Greek Court, and in view of the circumstances of the present case, the Arbitrator has not been persuaded that there are serious reasons within the meaning of Article 186(1) *bis* PILA to stay these FAT proceedings. The Arbitrator therefore finds that the present dispute can be heard, despite the existence of concurrent proceedings in the Greek Court.

### **5.1.1 Arbitrability**

37. 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.<sup>2</sup>

### **5.1.2 Formal and substantive validity of the arbitration agreement**

38. The existence of a valid arbitration agreement is to 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*

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<sup>2</sup> Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



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*any other means of communication which permits it to be evidenced by a text.*

*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."*

39. The First Contract is in written form and thus the arbitration agreement contained in its fourth condition (see para. 30 *supra*) fulfills the formal requirements of Article 178(1) PILA.

## 6. Discussion

### 6.1. Applicable Law – *ex aequo et bono*

40. 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 into English as follows:

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

41. As set out in paragraph 29 above, the First Contract stipulates that any disputes arising out of the First Contract shall be resolved by the FAT "*in accordance with the FAT Arbitration Rules*". Under the heading "Applicable Law", Article 15.1 of the FAT Rules



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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.”*

42. Condition 4 of the First Contract also stipulates that “[t]he arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono.” Consequently, the Arbitrator shall adjudicate the claims *ex aequo et bono*.
43. 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*<sup>3</sup> (Concordat),<sup>4</sup> 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.”*<sup>5</sup>

44. 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 legal rules. Instead of applying general and abstract rules, he/she must stick to the

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

<sup>4</sup> P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

<sup>5</sup> JdT 1981 III, p. 93 (free translation).



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*circumstances of the case*".<sup>6</sup>

45. 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*".
46. In light of the foregoing matters, the Arbitrator makes the following findings:

### 6.2. Findings

#### 6.2.1 The termination

47. Both the Claimants and the Respondent agree that the Coach's employment with the Club was terminated at a meeting on 3 October 2009. The Claimants argue that the Club fired the Coach, terminating the contractual relationship unilaterally without just cause, whereas the Respondents argue that the Coach agreed to resign, thus consenting to a mutual termination of the contractual relationship.
48. The Parties agree that there is no written record of the termination: no letter or email detailing the terms of the termination was sent by the Club to the Coach, and no written termination agreement was concluded by the Parties. The Arbitrator asked the Claimants, by Procedural Order dated 26 May 2010 to "*provide evidence that the Respondent terminated the contractual relationship between the Claimants and the Respondent unilaterally and that it was not terminated by mutual consent.*" In their

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<sup>6</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.



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response to the Procedural Order, the Claimants provided a news article taken from the website '*The Hoop*', dated 2 October 2009. The article implies that if the Club does not win its next game, the Club may replace Claimant 1 with another coach. The Arbitrator finds that this is not sufficient evidence that the Respondent terminated the contractual relationship unilaterally and thus that the Claimants have not proven that the contractual relationship was terminated unilaterally. The Claimants' claim therefore fails in this respect.

### 6.2.2 Claimant 1's unpaid wages

49. At the time when Claimant 1 ceased working for the Respondent (i.e. 3 October 2009), the Respondent had not, and continues not to have, paid Claimant 1's wages for the 2009/10 season up until 3 October 2009. Instead, only one payment of EUR 15,000.00 was made. The Arbitrator finds, *ex aequo et bono*, that Claimant 1 provided services to the Respondent during these months and is entitled to compensation for such services.
  
50. As noted in paragraph 26 above, the Respondent agrees that Claimant 1 is entitled to compensation for these services, however the Parties are not in agreement as to the basis of the calculation of such compensation. The Claimants argue that the First Contract provides for monthly salary payments of EUR 23,500.00 on the 30<sup>th</sup> day of each month from August 2009 to May 2010. It is unclear to the Arbitrator how the Respondent has calculated its proposed compensation. The Respondent seeks to rely on the Second Contract, which makes provision for monthly salary payments of EUR 13,438.00 on the 30<sup>th</sup> day of each month from August 2009 to May 2010, however the Respondent states in its Answer that its offer to mutually terminate the Second Contract totaled EUR 38,000.00, which comprised "*his wages of the months July, August, September and October 2009, as well as an amount of 5.000 euros as his family removal expenses to Italy, as for which the amount of 2.000 euros was counter-*



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*proposed.*” The Arbitrator notes that neither the First Contract nor the Second Contract provide for any salary to be paid in July 2009. The Arbitrator also notes that the Coach’s salary payments for July to October 2009, when combined, do not total EUR 38,000.00, whether or not EUR 5,000.00 or EUR 2,000.00 is added to the figure, whether or not the EUR 15,000.00 payment is deducted, and whether the salary set out in the First Contract or the Second Contract is used.

51. It falls to the Arbitrator to determine the basis on which Claimant 1’s compensation should be calculated. The First Contract provides for monthly salary payments of EUR 23,500.00 for August, September and October 2009. The Second Contract provides for monthly salary payments of EUR 13,438.00 for August, September and October 2009. The Arbitrator finds that the appropriate contract for calculating the Coach’s compensation is the First Contract for two reasons.
52. Firstly, and as stated in paragraph 34 above, the effect of condition 5 of the First Contract is that the Second Contract is incapable of changing or limiting any of the Coach’s rights set out in the First Contract. This includes the Coach’s right to receive the salary payments set out in the First Contract.
53. Secondly, the Arbitrator notes that there is a large discrepancy between the Coach’s salary for the 2008/09 season as set out in the First Contract (EUR 215,000.00) and as set out in the Second Contract (EUR 112,800.00). The Claimants have supplied evidence that the Coach actually received irregular, and often late, bi-monthly payments which totaled EUR 174,000.00. The Claimants state that EUR 40,000.00 of the remaining EUR 41,000.00 was paid on 2 October 2009. This evidence, they claim, is proof that the schedule of wages set out in the First Contract is the schedule that should be adhered to. The Respondent submits that the Club only paid the Coach the wages set out in the Second Contract and that any additional amounts were paid by



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the President of the Club, who had a personal friendship with the Coach. This, the Respondent claims, is why bi-monthly payments were made. The Arbitrator finds that the effect of the bi-monthly payments that were made (regardless of whether the payments were made by the Club or by the President of the Club) was that the Respondent paid the Coach wages pursuant to the First Contract.

54. Using the salary provisions of the First Contract as the basis for determining the compensation due to the Coach, the Arbitrator finds that the Coach is owed unpaid wages for August, September and the first three days of October. The Coach's wage under the First Contract is EUR 23,500.00 for August and EUR 23,500.00 for September. The Arbitrator finds that the Coach should be paid pro-rata for the month of October and so the sum is calculated by dividing the number of days worked (3), by the number of days in the month (31) and multiplying it by the wage for that month (EUR 23,500.00), which gives a figure of EUR 2,274.19. The total compensation due to the Coach for the 2009/10 season is therefore EUR 49,274.19. The Coach states in his Request for Arbitration that EUR 15,000.00 of his salary for the 2009/10 season has already been paid, thus the Arbitrator finds that only EUR 34,274.19 of the Coach's salary is now due and payable.

#### **6.2.3 Claimant 1's claim for harm to reputation**

55. The Claimants have failed to prove that the Respondent did in fact terminate the contractual relationship unilaterally. It therefore follows that the Claimants have failed to show that the Respondent harmed Claimant 1's reputation by firing him. Accordingly, the Arbitrator finds that Claimant 1's claim for damages for harm to his reputation fails.



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### 6.2.4 The agents' fees

56. In relation to agents' fees, the First Contract provides that the Respondent will pay an agent fee of 10% to Claimant 2 and Claimant 3. The First Contract does not provide for a payment date. The Respondent has paid an agents' fee for the 2008/09 season, but not the 2009/10 season. The Arbitrator finds, *ex aequo et bono*, that because the Coach did not complete the First Contract, Claimants 2 and 3 are not entitled to 10% of the Coach's total salary for the 2009/10 season, but instead are entitled to 10% of the total compensation due to the Coach for the 2009/10 season, as set out in paragraph 54 (i.e. 10% of EUR 49,274.19). The Respondent must therefore pay Claimant 2 EUR 2,463.71 and pay Claimant 3 EUR 2,463.71.

### 7. Interest

57. The Claimants claim interest on all due sums at a rate of 5% per annum. Payment of interest is a customary and necessary compensation for late payment and there is no reason why the Claimants should not be awarded interest. The Arbitrator considers, in line with the jurisprudence of the FAT, that 5% per annum is a reasonable rate of interest that should be applied to the outstanding payments. The Arbitrator considers that interest on the Coach's unpaid salary of EUR 34,274.19 should accrue from the date on which the payment was due. Therefore interest on EUR 8,500.00 (i.e. the August wages less the EUR 15,000.00 already paid) accrues from 30 August 2009; interest on EUR 23,500.00 (i.e. the September wages) accrues from 30 September 2009; and interest on EUR 2,274.19 (i.e. the pro-rata October wages) accrues from 3 October 2009.



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58. No payment date for the agents' fees is specified in the First Contract and so the Arbitrator finds that interest on the agents' fees is due from 3 October 2009.

### 8. Costs

59. 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.

60. On 21 September 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 12,000.00.

61. The Arbitrator notes that the Respondent did not pay its share of the Advances on Costs. The Arbitrator notes that the Claimants were successful in establishing their claims in relation to unpaid salary amounts and agents' fees until 3 October 2009, but all other parts of their claim failed. The Arbitrator also notes that the Respondent made an offer of payment of EUR 38,000.00 to Claimant 1 resolve this dispute and that the



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offer was rejected. The Arbitrator decides that in application of article 19.3 of the FAT Rules:

- (i) The Claimants shall bear their own legal costs and expenses, including the non-reimbursable fee; and
  
- (ii) The Respondent shall reimburse EUR 6,000.00 to the Claimants, being its share of the Advance on Costs advanced by the Claimants.



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### **9. AWARD**

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

- I. KAE Aris Thessaloniki B.C. is ordered to pay to Mr. Andrea Mazzon EUR 34,274.19 together with:
  - (a) 5% interest p.a. on EUR 8,500.00 from 30 August 2009;**
  - (b) 5% interest p.a. on EUR 23,500.00 from 30 September 2009; and**
  - (c) 5% interest p.a. on EUR 2,274.19 from 3 October 2009.****
- II. KAE Aris Thessaloniki B.C. is ordered to pay to Mr. Elias Diamantopoulos EUR 2,463.71, together with 5% interest p.a. from 3 October 2009.**
- III. KAE Aris Thessaloniki B.C. is ordered to pay to Mr. Dario Santrolli EUR 2,463.71, together with 5% interest p.a. from 3 October 2009.**
- IV. KAE Aris Thessaloniki B.C. is ordered to pay to Mr. Andrea Mazzon, Mr. Elias Diamantopoulos and Mr. Dario Santrolli EUR 6,000.00 as a reimbursement of the advance of FAT costs.**
- V. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 24 September 2010

Raj Parker  
(Arbitrator)



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## 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."