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**FIBA Arbitral Tribunal (FAT)**

## **ARBITRAL AWARD**

**(0075/10 FAT)**

by the

**FIBA ARBITRAL TRIBUNAL (FAT)**

**Mr Quentin Byrne-Sutton**

in the arbitration proceedings between

**Mr. Amit Tamir**, 27 Guatemala street, Appt. 23, 96704 Jerusalem, Israel

**Claimant 1**

**Mr. Arik Krayn**, 2 Yamit street, Rishon Lezion, Israel

**Claimant 2**

Both represented by Mr. Aris Lychnaras, 28 Ioulianou & 3<sup>rd</sup> Septemvriou,  
10434 Athens, Greece

vs.

**Seastar Apoel Nicosia Basketball Club**, Limmasol Kennedy Square, 1076 Nicosia, Cyprus

**Respondent**



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### **1. The Parties**

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

1. Mr. Amit Tamir (“the Player”) is a professional basketball player, who during the 2009-2010 season played for the team Seastar Apoel Nicosia in Cyprus. Mr. Arik Krayn (“the Agent”) is a certified FIBA agent that represents professional basketball players, among others the Player. Claimants are represented by Mr. Aris Lychnaras, attorney-at-law in Athens, Greece.

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

2. Seastar Apoel Nicosia Basketball Club (the “Club”) is a professional basketball club in Cyprus.

### **2. The Arbitrator**

3. On 8 March 2010, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules"). None of the Parties has raised objections to the appointment of the Arbitrator or to his declaration of independence.



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### **3. Facts and Proceedings**

#### **3.1. Summary of the Dispute**

4. The Player and the Club entered into an agreement on 27 August 2009 whereby the latter engaged the Player for the season 2009-2010 (the "Agreement").
5. The Club, the Player and the Agent all signed the Agreement.
6. Article 3 of the Agreement provides that:

*"It is agreed that the Agreement is a "no cut agreement" and Player will get the salary and bonuses in all cases. Accordingly, this Agreement is fully guaranteed by Club for all salary payments, including but not limited to lack of skill, injury or death of Player".*

7. According to the schedule of monthly salary payments in the Agreement, the Player was to receive, by means of eight installments, a total remuneration of USD 64,750 between September 2009 and April 2010, whereas the Agent was to be paid a fee of USD 7,000 by 31(sic) September 2009.
8. The payment schedule in the Agreement provides that:

*"Any delay in the Club's payment beyond 15 days will be regarded as breach of contract and will require Club pay Player or Player's representative on any monies owed".*

9. The Agreement stipulates that the following bonuses would be paid within 10 days of the achievement of the following successes:
  - USD 4,000, if the Club wins the Cyprus Cup
  - USD 1,000, for each move (sic) to a next round in FIBA games



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- USD 7,000, if the Club wins the Cyprus League Championship
  - USD 500 if the Club wins games against Keravnos during the regular season
10. Article 3, subparagraph B of the Agreement, which specifically regulates the bonuses, also provides that *“Any delay in the Club’s payment beyond 15 days will be regarded as breach of contract and will require Club [to] pay Player a 10% fee penalty on any monies owed”*.
11. The Claimants contend that despite the fully guaranteed nature of the Agreement, the following events occurred:
- The Club paid the first salary installment of USD 4,750 on 22 September 2009 and the second installment of USD 9,250 on 30 October 2009.
  - Thereafter the Club made no further salary payments, leaving the total outstanding salaries for the season at USD 50,750.
  - The Club did not pay the Agent’s fee of USD 7,000.
  - Around 17 November 2009, the Player got injured and was absent for a few days but then resumed training.
  - After the Player had returned to training, the team left on 23 November for a game in Strasbourg and he was required by the team committee to remain in Cyprus to continue therapy.
  - He kept practicing but was not selected to play for the subsequent game of 28 November.



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- On 29 November 2009 the team manager told the Player informally after a practice session that the team committee had decided a week earlier to release him from the Club and that this decision would be announced.
- He continued training but a few days later was told officially by the General Secretary of the Club that the latter had decided to “release him” and pay him two months of salary. The Player refused the offer.
- The General Secretary also spoke to the Agent stating that the Club no longer wanted the Player.
- On 6 December 2009, the Claimants’ lawyer wrote to the Club refusing its offer and putting the Club on notice to pay all amounts owed under the Agreement, failing which a claim would be filed.
- On 7 December 2009, the Club sent the Player a draft settlement agreement (the “draft Settlement”) whereby the Parties would mutually agree to terminate the employment Agreement upon payment by the Club of an amount of €12,500, to be effectuated in three installments, as “*full and final settlement*”.
- Faced with this situation, the Player decided to leave for home. With the assistance of the team manager, he returned the house and car keys and left for Israel by plane on 21 December 2009.
- On 30 December 2009, the Claimants’ lawyer confirmed their refusal of the settlement offer and stated in substance that the Club had breached its contractual obligations by withholding payments due and *de facto* terminating the Agreement unilaterally. By means of the foregoing letter, the Club was also put



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on notice to pay all outstanding amounts due under the Agreement.

- No response was received from the Club to the notice letter of 30 December 2009.
12. The Club having made no further payments to the Player or his Agent as demanded, they filed a Request for Arbitration with the FIBA Arbitral Tribunal (the "FAT").

### 3.2. The Proceedings before the FAT

13. On 26 February 2010, the Claimants filed a Request for Arbitration in accordance with the FAT Rules.
14. On 8 March 2010, the FAT Secretariat informed the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter.
15. In the same letter and in accordance with the FAT Rules, the Respondent was provided with a deadline until 30 March 2010 to file its Answer and was informed that:

*"Any defence as to lack of jurisdiction of the FAT must be submitted in the Answer, failing which the defence is deemed to be waived [...] Please note that according to Art. 14.2 of the FAT Rules the Arbitrator may proceed with the Arbitration even if the Respondent fails to submit an Answer..."*

16. Despite the foregoing reminder, the Respondent failed to file its Answer or to make any form of submission.
17. On 7 April 2010, the FAT Secretariat acknowledged receipt of the payment by Claimants of their share of the advance on costs in a total amount of EUR 4,500.
18. In the same letter, the FAT Secretariat informed the Claimants that they would have to



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substitute for the Club with respect to the Advance on Costs because the latter had not paid its portion thereof.

19. On 21 April 2010, the Player made the substitute payment in an amount of EUR 4,500.00.
20. On 5 May 2010, the FAT Secretariat confirmed the proceedings would continue and, on behalf of the Arbitrator, invited the Claimants to file “*by no later than Wednesday, 1[2] May 2010, documentary proof of the events triggering the bonuses being claimed*”.
21. On 12 May 2010, the Claimants submitted documentary evidence relating to the events triggering the bonus payments under the Agreement.
22. In their Request for Arbitration, the Claimants had requested the FAT to hold a hearing. Upon receipt of the written submissions and taking into account all the circumstances of the case, the Arbitrator decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing.
23. Accordingly, on 27 May 2010, the FAT Secretariat informed the Parties that the Arbitrator had decided to close the proceedings in accordance with the FAT Rules and requested that they submit their accounts of costs.
24. On 28 May 2010, the Claimants submitted their account of costs as follows:

“Expenses for F.I.B.A.

<i>DATE</i>	<i>AMOUNT</i>	<i>CLAIMANT</i>	<i>CAUSE</i>
23-2-2010	2.400 €	Amit Tamir	Handling fee
25-2-2010	600 €	Arik (sic) Kryn	Handling fee
19-3-2010	3.500 €	Amit Tamir	Advance on costs (Claimant’s share)
26-3-2010	1.000 €	Arik (sic) Kryn	Advance on costs (Claimant’s share)
21-4-2010	4.500 €	Amit Tamir	Advance on costs (Respondent’s share)

*For every bank transfer the transferring fee was 45 €. So the sum is 45 x 5 = 225 €.*



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### Lawyer Expenses

<u>AMOUNT</u>	<u>CLAIMANT</u>
800 €	Amit Tamir
200 €	Arik (sic) Kryn

### Procedural and Telephone Expenses

<u>AMOUNT</u>	<u>CLAIMANT</u>
300 €	Amit Tamir
300 €	Arik (sic) Kryn

TOTAL AMOUNT: 13.600 “

25. Throughout the proceedings the Respondent was copied on all the communications to and from the FAT Secretariat but nevertheless refrained from filing any submissions or observations.

## 4. The Positions of the Parties

### 4.1. The Claimants' Position

26. The essence of the Claimants' position and their prayers for relief are stated as follows in the Request for Arbitration:

"4.) Following the above it is clearly proved that:

A) For the first Claimant (ATHLETE):

- a) *The Club released me, I did not leave willingly, the between us collaboration was terminated exclusively by the Club's responsibility and as a result the Club owes me all the agreed from the Contract of Athletic Services amounts.*
- b) *My Contract is "fully guaranteed" and as a result the Club owes me all the agreed from the Contract of Athletic Services amounts.*
- c) *The Club OWES ME AND MUST BE OBLIGED BY YOUR DECISION TO PAY ME THE FOLLOWING AMOUNTS:*

FOR MY SALARY:

- a) *9.250 USD, that were to be paid on 15-11-2009, including the legal rate of interest from the very next day.*
- b) *9.250 USD, that were to be paid on 15-12-2009, including the legal rate of interest from the very next day.*



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- c) 9.250 USD, that were to be paid on 15-1-2010, including the legal rate of interest from the very next day.  
*In addition, the club must pay me the rest installments of my Contract, which have become matured because of my release and also to pay me:*
- d) 9.250 USD, for the installment that was to be paid on 15-2-2010, including the legal rate of interest from the day of my release.
- e) 9.250 USD, for the installment that was to be paid on 15-3-2010, including the legal rate of interest from the day of my release.
- f) 4.500 USD, for the installment that was to be paid on 15-4-2010, including the legal rate of interest from the day of my release.  
The club must be obliged to pay me for my SALARY the amount of 50.750 USD, including the legal rate of interest.

### FOR BONUSES:

- a) 500 USD, for the victory of the team versus Keravnos on 1-11-2009, including the legal rate of interest from the achievement of the goal.
- b) 500 USD, for the victory of the team versus Keravnos on 2-1-[2010], including the legal rate of interest from the day of my release.
- c) 1.000 USD, for the passing of the team to the next round of F.I.B.A. Challenge cup, with the legal rate of interest from the day of my release.
- d) 4.000 USD, if the team wins the Cyprus Cup.
- e) 1.000 USD, for every round, if the team continues to move rounds in F.I.B.A. Challenge cup
- f) 7.000 USD, if the team wins the Cyprus League Championship.

### FOR 10% DELAY PENALTY FEE:

*The Club must be obliged to pay me also 10% of the owed amounts, for every fifteen (15) days of delay of the payment of every installment and with the legal rate of interest:*

- a) *For the installment that was to be paid on 15-11-2009, which has been delayed until today 5 times x 15 days, equals  $9.250 \$ \times 10\% = 925 \$ \times 5 \text{ times} = 4.650 \$$ .*
- b) *For the installment that was to be paid on 15-12-2009, which has been delayed until today 3 times x 15 days, equals  $9.250 \$ \times 10\% = 925 \$ \times 3 \text{ times} = 2.775 \$$*
- c) *For the victory of the team versus Keravnos on 1-11-2009, which has been delayed until today 6 times x 15 days, equals  $500 \$ \times 10\% = 50 \$ \times 6 \text{ times} = 300$*
- d) *For the victory of the team versus Keravnos on 2-1-2010, which has been delayed until today 3 times x 15 days, equals  $500 \$ \times 10\% = 50 \$ \times 3 \text{ times} = 150\$$ .*
  - *In addition, the Club must be obliged to pay me also 10% including the legal rate of interest of all the amounts of Bonuses that will be achieved in the future.*

### B) For the second Claimant (AGENT):



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*As it results from the Contract of Athletic Services that was signed on 27-8-2009, between the Club SEASTAR APOEL NICOSIA, the Athlete and the second of us, Agent Arik Krayn, the Club owes me:*

- a) *7.000 USD, as a payment for the already provided services of mine, amount which should have been paid to me on 31-9-2009, including the legal rate of interest from the very next day.*
- b) *10% penalty for every 15 days of delay, meaning from 31-9-2009 and has been delayed until today 8 times x 15 days, equals 7.000 \$ x 10% = 700\$ x 8 times = 12.600 \$.*

*The Club must be obliged to pay me totally 28.000 \$, including the legal rate of interest.*

- c) *For Legal Fees and Expenses:  
Apart from all the mentioned above demanding amounts, it is required that there are also adjudicated all the Arbitration expenses, together with the legal fees and the expenses that we spent and will have spend, until the end of the legal procedure.”*

### **4.2. Respondent's Position**

- 27. As mentioned above, despite several invitations to do so, the Club has not made any submissions in these proceedings.

## **5. The jurisdiction of the FAT and other Procedural Issues**

### **5.1. Review ex officio**

- 28. Since the Respondent did not participate in the arbitration proceedings, the question of jurisdiction will be examined *ex officio*, on the basis of the evidence on record<sup>1</sup>.

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<sup>1</sup> ATF 120 II 155, 162.



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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). The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
30. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA<sup>2</sup>.
31. The jurisdiction of the FAT over the dispute results from article 6 of the Agreement, containing the following arbitration clause:
- “Any dispute arising from or related to this document or the Termination Agreement 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 Sports (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.”*
32. The foregoing agreement to arbitrate is in written form and thus fulfills the formal requirements of Article 178(1) PILA.



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33. With respect to its substantive validity, the Arbitrator considers that there are no elements on record that cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).
34. The jurisdiction of FAT over Claimants' claims arises from the Agreement. The wording "[a]ny dispute arising from, or related to this document (...)" clearly covers the present dispute<sup>3</sup>.
35. Consequently, the Arbitrator has jurisdiction to rule upon the claims.

### 5.2. Other Procedural Issues

36. 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*". This authority of the Arbitrator to proceed with the arbitration despite the default of one of the parties is in keeping with Swiss arbitration law<sup>4</sup> and corresponds to the practice of the FAT<sup>5</sup>,

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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.

<sup>3</sup> See for instance BERGER/ KELLERHALS: Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 466.

<sup>4</sup> 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 LDIP, 2<sup>nd</sup> ed., Bern 2010, 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, 2<sup>nd</sup> ed., Basel 2007, Art. 182 PILA N 87; VISCHER, in: Zurich Commentary to the PILA, 2<sup>nd</sup> ed., Zurich/Basel/Geneva 2004, Art. 182 IPRG N 29.

<sup>5</sup> See for instance FAT Decision 0001/07 dated 16 August 2007, Ostojic and Raznatovic vs. PAKO 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 0010/08 dated 16 June 2009,



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providing always that the defaulting party is given a fair opportunity to assert its rights.

37. This requirement is met in the current case. The 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 and was copied on all the subsequent communications from the FAT throughout the proceedings. However, the Respondent has chosen not to respond within the time limits set by the FAT according to the FAT Rules or to make any procedural applications to the FAT.

## 6. Discussion

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

38. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide "*en équité*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

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

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

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Grgurevic vs. AEP Olympias Patras; FAT Decision 0043/09 dated 13 October 2009, Gomis vs. Women's Basketball Club Fenerbahçe.



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*“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.”*

40. Article 6 of the Agreement stipulates that any disputes arising from or related to it shall be resolved in accordance with the FAT Rules, meaning that the foregoing provision of the FAT Rules (article 15.1) is applicable and, since the Parties have not made a different choice, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.
41. 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>6</sup> (Concordat)<sup>7</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>8</sup>*

42. 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*”.
43. In light of the foregoing considerations, the Arbitrator makes the findings below.

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<sup>6</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>7</sup> P.A. KARRER, Basler Kommentar, No. 289 ad Art. 187 PILA.

<sup>8</sup> JdT 1981 III, p. 93 (free translation).



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### 6.2. Findings

44. The Respondent has not contested the Claimants' allegations as to the facts of the case, despite the Respondent having had ample opportunity to do so.
45. Furthermore, the Claimants' main allegations are well supported by the documentary evidence submitted, i.e.:
  - The Agreement is, according to its terms, a "no cut agreement" that cannot be terminated e.g. in case of an injury or for any alleged lack of skill, and it goes so far as to state that the "...*Player will get the salary and bonuses in all cases*".
  - The Agreement unambiguously provides for all the salary payments being claimed by the Player and also for the fee being claimed by the Agent.
  - The Agreement also provides for the payment of the bonuses being claimed on the basis of the events being invoked by the Player.
  - The team victories triggering the bonuses the Player is invoking did occur.
  - It is clear from the content and date of the draft Settlement proposed to the Player by the Club that the latter did not wish to keep the Player on the team and that by early December 2009 it had decided *de facto* to take him off the team and ask him to leave without providing any particular reasons.
  - It is clear from the two notice letters sent by the Claimants' lawyer at the time of the facts that they were objecting to the Club's behaviour, which they deemed to be in breach of the Agreement, and that they did not accept the draft Settlement and were in substance going to claim what they are now claiming in this



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arbitration if the Club did not comply with the notices.

46. Consequently, both the contractual terms and fairness require that the Player be entitled to the entire salary and the bonus opportunities he lost for the sole reason that the Club no longer wanted to use his services only a few months into the season. Given the no cut and fully guaranteed nature of the Agreement, it was fair for the Player to assume he would be entitled to his entire salary and the bonuses if the Agreement was terminated without cause. There is only one limitation linked to the fact that the Agreement provides that the bonuses are “non-cumulative”. In that respect, since the Player is in effect claiming the bonuses for both the Club’s qualification in the FIBA Eurochallenge Top 16 (USD 1,000) and the quarterfinals (USD 1,000), the Arbitrator finds that the Player is only entitled to the first bonus<sup>9</sup>.
47. Furthermore, since the evidence on record indicates that the Player was no longer fielded from around mid-November 2009, while at the same time he was made to understand he was no longer wanted on the team and that he would not be offered more than the partial compensation stipulated in the draft Settlement, it was normal for the Player to consider in good faith by mid-December that *de facto* his contract had been unilaterally terminated; and therefore it was fair for him to consider that in such circumstances leaving for home at the Christmas break made more sense than remaining in Cyprus and continuing to negotiate or remaining at the Club’s disposal for no purpose.

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<sup>9</sup> Indeed, it appears that the club advanced on 12 January 2010 to the Top16 of FIBA Eurochallenge and then on 9 March 2010 to the Quarter Finals of the same competition.



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48. Both the contractual terms and principles of fairness also justify the Agent's claim, since there are no elements indicating why he would not deserve or be entitled to his stipulated fee.
49. Finally, since according to the Agreement the due dates for all the outstanding payments (Player's salary and Agent's fee) are long past, there is no reason to consider the claim premature.
50. On the other hand, contrary to what the Claimants appear to be contending there is no clause in the Agreement providing for a 10% penalty in case of late payments in general, and it would be unfair to allow a penalty amount that on the face of the evidence was never discussed. Article 3, subsection B, of the Agreement provides for payment of "*a 10% late fee penalty*", however subsection B only regulates bonuses whereas subsection A which regulates the salary payments refers to late payments without stipulating any late fee penalty. Consequently, the requested 10% penalty will only be applied to the late bonus payments. Such penalty shall apply from the 11<sup>th</sup> day after the occurrence of the event triggering the bonus since according to the Agreement the due date for the payment of bonuses is 10 days from the occurrence of the event justifying the bonus.
51. That said, the Claimants' request for a 10% penalty including on late payment of the Player's salary and the Agent's fee can also be characterized as a request for late interest and in that respect although the Agreement does not regulate interest for late payments, it is a generally recognized principle embodied in most legal systems, which is underpinned by motives of equity, that late payments give rise to interest – in order that the creditor be placed in the financial position she/he would have been in had payments been made on time.
52. Consequently and despite the Agreement not specifying an interest rate, it is normal



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and fair that interest is due on the late payments, and a reasonable interest rate of 5% per annum, which is in line with the interest allowed under the practice of FAT, can be applied in fairness.

53. It is an established principle that interest runs from the day after the date on which the principal amounts are due. Consequently, interest at 5% will be applied from the day after the due date of each outstanding amount, in accordance with the schedule of payments for the Player's base salary provided in the Agreement and with the due date provided in the Agreement for the Agent's fee.

### 7. Costs

54. Article 19 of the FAT Rules provides that the final amount of the costs of the arbitration shall be determined by the FAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings.
55. On 4 June 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 to be EUR 5,450.00 .
56. Considering the Claimants largely prevailed in their claims, it is fair that the fees and costs of the arbitration be borne by the Club and that the latter be required to cover the



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Claimants' legal fees and other expenses, those having been submitted being reasonable in amount.

57. Given that the Claimants paid the totality of the advance on costs of EUR 9,000.00 as well as a non-reimbursable handling fee of EUR 3,000.00, the Arbitrator decides that in application of Article 19.3 of the FAT Rules:
- (i) FAT shall reimburse EUR 3,550.00 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the FAT President.
  - (ii) The Club shall pay EUR 5,450.00 to the Claimants, being the difference between the costs advanced by them and the amount they are going to receive in reimbursement from the FAT.
  - (iii) The Club shall pay to the Claimants EUR 4,825.00 (constituted by EUR 3,000 for the non-reimbursable handling fee, EUR 225 for the bank transfer fees and EUR 1,600 for legal fees and related expenses), representing the amount of their legal fees and other expenses.



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### 8. AWARD

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

1. Seastar Apoel Nicosia Basketball Club shall pay Mr. Amit Tamir the following amounts as compensation for the salaries and bonuses owed to him under their Agreement of 27 August 2009:
  - **USD 9,250**, plus interest at 5% per annum on such amount from 16 November 2009 onwards, as compensation for unpaid salary.
  - **USD 9,250**, plus interest at 5% per annum on such amount from 16 December 2009 onwards, as compensation for unpaid salary.
  - **USD 9,250**, plus interest at 5% per annum on such amount from 16 January 2010 onwards, as compensation for unpaid salary.
  - **USD 9,250**, plus interest at 5% per annum on such amount from 16 February 2010 onwards, as compensation for unpaid salary.
  - **USD 9,250**, plus interest at 5% per annum on such amount from 16 March 2010 onwards, as compensation for unpaid salary.
  - **USD 4,500**, plus interest at 5% per annum on such amount from 16 April 2010 onwards, as compensation for unpaid salary.
  - **USD 500**, plus interest at 10% per annum on such amount from 12 November 2009 onwards, for the victory of the team against *Keravnos*.
  - **USD 500**, plus interest at 10% per annum on such amount from 13 January 2010 onwards, for the second victory of the team against *Keravnos*.
  - **USD 1,000**, plus interest at 10% per annum on such amount from 23 January 2010 onwards, in relation with results obtained in the FIBA Eurochallenge cup.



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- **USD 7,000**, plus interest at 10% per annum on such amount from 4 May 2010 onwards, for the team winning the title in the Cyprus League Championship.
- 2. Seastar Apoel Nicosia Basketball Club shall pay to Mr. Arik Krayn **USD 7,000**, plus interest at 5% per annum on such amount from 1 October 2009 onwards, as compensation for outstanding contractual agent fees.
- 3. Seastar Apoel Nicosia Basketball Club shall pay Claimants an amount of **EUR 5,450** as reimbursement for the Claimants' arbitration costs.
- 4. Seastar Apoel Nicosia Basketball Club shall pay Claimants an amount of **EUR 4,825** as reimbursement for the Claimants' legal fees and expenses.
- 5. Any other or further requests for relief are dismissed.

Geneva, seat of the arbitration, 23 June 2010

Quentin Byrne-Sutton

(Arbitrator)



**FIBA**

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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."