



**BASKETBALL**  
ARBITRAL TRIBUNAL

**ARBITRAL AWARD**

**(BAT 0226/11)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Ulrich Haas**

in the arbitration proceedings between

**Mr. Claude Marquis**

**- Claimant -**

represented by Mr. Romuald Palao

vs.

**Rah va Tarabari Qom Club**

Shadid Heidarian Basketball Arena, Qom, Iran

**- Respondent -**

## **1. The Parties**

### **1.1 The Claimant**

1. Mr. Claude Marquis (hereinafter also referred to as “the Player” or “the Claimant”) is a professional basketball player of French citizenship.

### **1.2 The Respondent**

2. Rah va Tarabari Qom Club (hereinafter also referred to as “the Club” or “the Respondent”) is a basketball club that played in the Iranian Super League in the 2010-2011 season.

## **2. The Arbitrator**

3. On 23 November 2011, the President of the Basketball Arbitral Tribunal (the "BAT"), Prof. Richard H. McLaren, appointed Prof. Dr. Ulrich Haas as arbitrator (the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator nor to his declaration of independence.

## **3. Facts and Proceedings**

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

4. On 20 January 2011, Claimant signed an employment agreement with Respondent (hereinafter referred to as the “Contract”). According thereto, Claimant was employed as a professional basketball player by Respondent for the 2010-2011 season. The Contract was signed with the help of the Player’s agent, Mr. Aydin Dianat.



# BASKETBALL ARBITRAL TRIBUNAL

5. The main provisions of the Contract read as follows:

**"Payment:**

**Base Salary: 45000 USD per month**

*Payment will be structured as follows.*

<i>First two weeks after arrival date (Jan 19<sup>th</sup>)</i>	<i>22500 USD</i>
<i>February 8<sup>th</sup></i>	<i>22500 USD</i>
<i>March 8<sup>th</sup></i>	<i>45000 USD</i>
<i>April 8<sup>th</sup></i>	<i>45000 USD</i>
<i>May 8<sup>th</sup></i>	<i>45000 USD</i>

*The Club will pay including any income tax charged by the government of Iran on all money earned during the term of this contract all taxes. The Player salary is a **net amount** of \$ 180,000 USD following all taxes, income taxes and any fees. Club agrees to pay all amounts above to Player in cash.*

**Bonuses:**

*The Club agrees to pay the Player the following team bonuses:*

**Iranian Super League Competitions:**

*45000 USD per month as base salary*

**Total 6000 USD Bonus for reaching the Finals.**

**Total 1200 USD Bonus for reaching the 3<sup>rd</sup> place.**

**Total 1800 USD Bonus for winning the title.**

*Concerning the system of Bonus the total salary will be paid in case of different scenarios below:*

<i>1. Not reaching the final four</i>	<i>total salary:</i>	<i>180,000 USD</i>
<i>2. Reaching 3<sup>rd</sup> place</i>	<i>total salary:</i>	<i>186,000 USD</i>
<i>3. Reaching the finals (2<sup>nd</sup> place)</i>	<i>total salary:</i>	<i>192,000 USD</i>
<i>4. Winning the league (1<sup>st</sup> place)</i>	<i>total salary:</i>	<i>198,000 USD</i>

*The amount of the bonuses for each win also depends on the situation and negotiated between the Club/agents/Player.*

*The all Bonuses will be paid within the month that the bonus is earned (i.e. reach final four in May \$6000 USD due in the month of May), based on the system mentioned above.*

**In case the league continues after or finishes before May 8<sup>th</sup>, 2011, those days salary (1500 USD per day) should be calculated and be paid to or cut from the Player and the Agent fees.**

**Late Payments:**

*Player will be paid all monies due his in full as scheduled herein. Late payments, either to Player or his representative accrue a penalty of \$50.00 USD for every day payments are late after the 7<sup>th</sup> day following the listed pay date. All money is fully guaranteed and the Club is responsible for payment for the entire season upon*



## BASKETBALL ARBITRAL TRIBUNAL

*signing of the agreement.*

*If the Club is more than (15) days late in the payment of any monthly salary payment or the Agent's commission, the Player may choose to refrain from participating in team practice sessions or any official games until the total amount owed to Player is remitted in full to Player. The agent also has the right to move the Player to another team any where in the world if any fees are late more then 15 days. If the agent decides to move the Player to another team then Rah va Tarabari Qom (Club) represented by Mr. Afkar as Manager will grant him a full FIBA release form immediately.*

*Also If the Player or Agent chooses to take this action, there shall be no sanction levied against Player and the Club cannot consider this action as a breach of the agreements set forth in this contract.”*

6. By 10 February 2011, the Club was late with its salary payments. In a statement signed by the Player and a representative of the Club, the former acknowledged having received USD 10,000 on that day. Furthermore, in the same statement, the Club promised to pay the outstanding amounts as quickly as possible.
7. On 5 May 2011, the agent of the Claimant, Mr. Aydin Dianat, wrote a letter to Mr. Hassan Afkar, manager of the Club, that reads as follows:

*“Following several phone calls and my visit to Qom, I wanted to remind and inform you that what my client, Mr. Ahmad Claude Marquis, decided to do on March 11<sup>th</sup> 2011 and 27<sup>th</sup> April 2011 before the first game of the playoffs was totally acceptable due to the contract signed between the parties on January 20<sup>th</sup> 2011 (in Ferdos hotel in Qom after your game versus Zob Ahan) referring the 2 clauses which you can see below and therefore cannot include any kind of penalty on my client based on agreement.*

**Page 2: Late payments:**

*Player will be paid all monies due his in full as scheduled herein. Late payments, either to the Player or his representative accrue a penalty of **\$50.00 USD** for every day payments are late **after the 7<sup>th</sup> day following the listed pay date**. All money is fully guaranteed and the Club is responsible for payment of any monthly salary payment for the entire season upon signing of the agreement.*

*If the **Club** is more than **(15) days** late in the payment of **any monthly salary payment** or the **Agent's commission**, the **Player** may choose to refrain from participating in team practice sessions or any official games until the total amount owed to **Player** is remitted in full to **Player**. The agent also has the right to move the **Player** to another team any where in the world if any fees are late more then 15 days. If the agent decides to move the **Player** to another team then **Rah va Tarabari Qom** (Club) represented by Mr. Afkar as Manager will grant him a full FIBA release form immediately.*

*Also If the **Player** or **Agent** chooses to take this action, there shall be no sanction levied against **Player** and the **Club** cannot consider this action as a breach of the agreements set forth in this contract.*

Agency Fees payment section:

**Page 5: Fee Structure for Player Representative:**

Club agrees to pay the agent and representative (**Aydin Dianat**) a fee of 10% equal to **18000 USD as base agency fee by February 8<sup>th</sup> 2011**. If the Club is more than **(7) days** late in the payment of the **Agent's commission**, the **Player** may choose to refrain from participating in team practice sessions or any official games until the total amount owed to **Agents** is remitted in full to **Agent**. The Agent also has the right to move the Player to another team anywhere in the World if agent fees are late more then 15 days. If the agent decides to move the Player to another team then **Rah va Tarabari Qom (Club)** represented by Mr. Afkar as Manager, will grant the Player a full FIBA release form immediately. After the season is completed the team and the Player will sign a release paper. By signing this release the team and Player have no more obligations to one another and the Player is free to play for any other team.

*I am now requesting you to provide, an amount of 90,000 USD to my client maximum until 10<sup>th</sup> May 2011 or else I have no other option than terminating the agreement between you and my client and immediately appeal to FIBA, which at the moment they have been informed about the situation with your team and the problem we are facing, and ask for a BAT (FAT) to resolve the issue.*

*We also have sent a letter to the Iranian federation informing them about the situation and will see the president of the federation to have his guidance in this matter.*

*Moreover, we are asking you to provide, as soon as possible, Mr. Marquis, with all necessary guarantees regarding his last two payments that shall be due on April 8<sup>th</sup> and May 8<sup>th</sup> 2011.*

”

8. On 27 June 2011, the Club and the Player signed a document that reads as follows:

*“Claude Marquis will receive [...] 30,640 USD for the season of 2010-2011 as a payment on the outstanding balance of 110,500 USD [...] The remaining money is to be paid by 24 August 2011. If the money is not paid Claude Marquis and the club represented by manager [...] will meet in FIBA.”*

### 3.2 The Proceedings before the BAT

9. On 20 October 2011, the BAT Secretariat received Claimant's Request for Arbitration (hereinafter referred to as “the RfA”). The RfA was originally directed against two Respondents, i.e. the Club and Jasheh Toss'eh BC. The non-reimbursable fee of EUR 3,000 was received in the BAT bank account on 31 October 2011.

10. On 23 November 2011, the BAT informed the Parties that Prof. Dr. Ulrich Haas had been appointed as Arbitrator in this matter.
11. On 29 November 2011, the BAT Secretariat acknowledged receipt of the RfA filed by the Claimant. It invited both Respondents to file their answer in accordance with Article 11.2 of the BAT Rules by no later than 20 December 2011 (the “Answer”); and fixed the amounts of the Advance on Costs to be paid by the Parties no later than 13 December 2011 as follows:

<i>“Claimant (Mr. Claude Marquis)</i>	<i>EUR 3,500</i>
<i>Respondent 1 (Rah va Tarabari Qom BC)</i>	<i>EUR 1,750</i>
<i>Respondent 2 (Jasheh Tosse'eh BC)</i>	<i>RUR 1,750”</i>

12. Since neither the confirmation letter nor the RfA (including exhibits) could be notified to the Respondents by mail (special courier) or by fax, on 29 November 2011, the BAT Secretariat reverted to the Basketball Federation of the Islamic Republic of Iran (hereinafter referred to as “the IRIBF”) and asked them to pass on the relevant documents to the clubs and confirm whether or not the documents had been duly delivered.
13. On 13 December 2011, the BAT secretariat wrote a letter to Mr. Kamalian of the IRIBF. The letter reads as follows:

*“Dear Mr. Kamalian,*

*I am addressing this message to you as I am looking for a contact person at the Basketball Federation of Iran. Zoran Radovic from FIBA with whom you are in contact provided me with your contact details.*

*We have recently sent the message below and the attached correspondence to the Basketball Federation of Iran concerning an arbitration case with Tarabari Qom BC and Jasheh Tosse'eh BC. However, so far we have not received any reply. As the matter is getting urgent, we were wondering if you could help us to find out whether the attached correspondence had been passed on to Tarabari Qom BC and Jasheh Tosse'eh BC.*

*We would very much appreciate a reply from you as soon as possible and thank you in advance for your kind cooperation."*

14. On 14 December 2011, Mr Kamalian responded to the BAT Secretariat as follows: *"As I just checked, our federation are in receipt of your request and have forwarded your correspondence to the Sports and Youth office in Qom."*
15. On 4 January 2012, the BAT Secretariat acknowledged receipt of Claimant's share of the Advance on Costs. Furthermore, it advised the Parties that the Respondent(s) had failed to submit an Answer and to pay their share of the Advance on Costs. Therefore, it invited Claimant to substitute for Respondents' share of the Advance on Costs by 16 January 2012. This deadline was subsequently extended until 16 February 2012.
16. On 22 February 2012, the BAT Secretariat sent a final reminder in relation to the Advance of Costs and advised the Parties that if Respondents' share of the Advance of Costs was not received by 7 March 2012, the RfA would be deemed withdrawn.
17. On 7 March 2012, the Claimant paid Respondents' share of the Advance of Costs.
18. In view of the fact that the correspondence could not be successfully notified to the Respondents, the BAT Secretariat on behalf of the Arbitrator, inquired with the Claimant on 30 May 2012 whether he wanted to proceed with the arbitration.
19. On 18 June 2012 Counsel of Claimant responded to the BAT Secretariat that Claimant wanted to proceed with the arbitration.
20. On 27 June 2012 the BAT Secretariat issued a procedural order which reads as follows:

*"We acknowledge receipt of Claimant's email dated 18 June 2012 which is attached for the information of the Respondent."*



## BASKETBALL ARBITRAL TRIBUNAL

1. In view of the provided information, the Claimant is asked to inform the Arbitrator by no later than **Wednesday, 25 July 2012** of the following:

a) Please inform of the identity of the Respondent, i.e. whether the Request for Arbitration is addressed against Club Rah va Tarabari Qom and/or Jasheh Tosse'eh BC.

b) In case the claim is directed (also) against Club Rah va Tarabari Qom Claimant is asked to submit evidence as to whether or not that legal entity is still existent. In case the RfA is (also) directed against Jasheh Tosse'eh BC Claimant is asked – within the same deadline – to provide evidence as to an arbitration agreement between him and that club.

Furthermore, Claimant is asked to provide the complete coordinates of that club.

2. The Claimant is advised that so far all attempts to service the Request for Arbitration on Rah va Tarabari Qom at the address indicated by Claimant have failed. All other means of service (e.g. electronically or by post – directly or via the national federation) were equally unsuccessful. The Arbitrator advises that without successful servicing of the Request for Arbitration and the relevant Orders the arbitration cannot proceed. **Claimant is herewith asked to effect the servicing of all relevant documents to Respondent himself and to provide proof thereof to the Arbitrator. In case the relevant documents are not submitted within the above deadline, the claim filed by Claimant will be dismissed on procedural grounds.**

21. On 25 July 2012, Counsel for Claimant responded to the Order of Procedure as follows:

*“Dear Mr Haas, Dear All,*

*Our problem is quite simple: a French Player, Claude Marquis, was hired by an Iranian Club, at that time called Rah va Tarabari Qom Club. But the club did not pay Mr Marquis all the due salaries, and still owes him 89.860 USD (79.860 USD concerning his base salary, and penalties due to late payments).*

*Mr Marquis had no other choice than taking his case to the BAT, and gave all the information he could concerning the identity of his former employer, despite all the difficulties he had to face. He would obviously had preferred another solution.*

*After paying 9.000 euros to have the right to see his case examined, Mr Marquis thought he could expect more reaction at an administrative level from the international basket ball institutions, including FIBA being able to identify one of his member.*

*But after several emails, phone calls, fax (to Fiba Europe, Fiba Asia, Iranian Federation, European Players' Union, French Players' Union, the Player's Agent, the Club itself...), we are now almost one year after Mr Marquis sent his request to the BAT, with nobody helping him to find informations about his previous club.*

*Everybody is aware of the situation but the club is still playing professional, under a new name (Jahesh Tarabar Qom Basket Ball).*

*The Iranian Federation has not answered any of our emails until yesterday, to finally tell us that they couldn't give any information without their President's authorization.*

*Mr Marquis payed 9.000 euros, he obviously doesn't want to give up, and still hopes he could get something back from the 90.000 USD that they owe him.*

*This case is not financially interesting for me, and as all of you, I would really appreciate seeing it solved. Any other issue would be a failure for all of us, and above all, for the BAT itself.*

*We are still expecting and hoping a return from the Iranian Federation, to give you the "missing" informations to solve this case.*

*Of course, as we have to get them by ourself, it takes some time, and we deeply apologize for that.*

*We hope we will get the written information from the Iranian Federation that Jahesh Tarabar Qom Basket Ball is the club who bought the right of Rah va Tarabari Qom (almost same name, same city, and same board..), but in case they don't give us this information, we hope we will get a real help from you." [sic]*

22. By email dated 25 July 2012, the BAT Secretariat on behalf of the Arbitrator extended the deadline to comply with the procedural directions of the Arbitrator until 31 August 2012.
23. By letter dated 17 August 2012, Claimant wrote a letter to the BAT Secretariat that reads as follows:

*"Dear Mr Haas, Dear All,*

*We acknowledge that after several email and phone calls the I.R. Iran Basketball Federation informed us on the phone that the basketball club Rah va Tabari Qom activity was suspended in 2011 and that there is no connexion between this former basketball club and the new one Jahesh Tarabar.*

*We contacted Mr. Aydin DIANAT, player's agent, who confirmed that the club's Rah va Tabari Qom activity was suspended.*

*In order for the arbitration procedure to be continued we inform you that the Respondent identity is:*

**Club RAH VA TABARI QOM**

Contact person:

**Mr. Hassan AFKAR** (former manager) tel: +98-9122510144; +98-9367934555



**BASKETBALL**  
ARBITRAL TRIBUNAL

*e-mail: afkar.basket@yahoo.com*

*(Qom Basketball Board office address:  
Shahid Heidarian Basketball Arena, Qom, Iran  
Telephone: +98-2512915454*

*Contact person:*

*Mr. Naderi Head of Qom Sport Basketball board, Tel +98-912352734  
Mr. Jahanbin, Head of Qom Sport Department, Tel +98-9122531347)*

*We deeply apologize for this delay and we hope that the provided information is helpful in pursuit of the case.”*

24. By letter dated 30 August 2012, the BAT Secretariat on behalf of the Arbitrator acknowledged receipt of Claimant’s letter. In the same letter the Arbitrator noted that the information provided by Claimant was not in accordance with the Procedural Order dated 27 June 2012. The Arbitrator gave a final deadline until 13 September 2012 to comply with his procedural directions.
25. On 13 September 2012, the Claimant wrote to the BAT Secretariat a letter reading – inter alia – as follows:

*“Dear Mr Haas, Dear All,*

*We are coming back to you, following your last email from the 30th of August.*

*As previously explained, we initially sent a request for arbitration in October 2011, with the name of two respondents.*

*We tried all we could to find the evidence that the second name mentioned (Jahesh Tosse'eh) was the same club as the first name mentioned (Rah va Tarabari Qom).*

*Unfortunately, we did not manage to find this evidence, despite asking the Iranian Federation to provide us all the informations concerning these both entities.*

*After several email and phone calls, the Iranian Federation informed us on the phone only that there was no connexion between the former basketball club and the new one Jahesh Tarabar.*

*Taking note of that information, and as written in our previous letter, we now only ask for a decision from the BAT, against Rah va Tarabari Qom, one of the two Respondents we initially mentioned, and the club whom Mr MARQUIS signed his contract with.” [sic]*

26. On 21 September 2012, the BAT Secretariat once more reverted to the IRIBF and requested the latter to inform the Arbitrator by no later than 1 October 2012 whether: “a) the correspondence dated 29 November 2011 and its enclosures were delivered to the clubs Rah va Tarabari Qom BC and Jasheh Tosse’eh BC; b) whether there is a connection between Club Rah va Tabari Qom and Jasheh Tosse’eh BC and c) whether the club Tarabari Qom still exists as a legal entity.”
27. On 6 October 2012, Mr Sadegh Ghanbari from the IRIBF responded to the BAT Secretariat as follows:

*“Based on letter reference BAT 0226/11 – Marquis vs Rah va Tarabari Qom BC, Jahesh Tosse’eh BC, Please find your answers below:*

*a) We have delivered the correspondence dated 29 November 2011 and its enclosures to the Rah va Tarabari Qom BC and Jahesh Tarabar QOM.*

*b) There is no connection between the two clubs.*

*c) Rah va Tarabari Qom does not exist as a legal entity.”*

#### **4. The Positions of the Parties**

28. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Arbitrator, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

##### **4.1 Claimant’s Position**

29. Claimant submits the following in substance:

- Claimant and Respondent have entered into a valid employment agreement.

- Even though Claimant has abided by his obligations, Respondent failed to pay the full salary to Claimant under the Contract. An amount of USD 79,860 is still outstanding.
- The Contract provides for a late penalty clause and that the late penalties should be calculated from the day the salaries should have been paid, as written in the Contract.

30. As a result, Claimant requests in his RfA that the Arbitrator award to Claimant the following amounts:

- “- 79,860 USD concerning the base salary (difference between what he should have received and what actually received, for the months of March, April and May)*
- 10,000 USD penalties due to late payments: 50 USD x 200 days for the late salaries from the 10<sup>th</sup> of February, to the 1<sup>st</sup> of September*
- The Player asks the Arbitral Tribunal to notice that the penalties should be counted from the day the salaries should have been, as written in the contract. In the alternative, the Tribunal will consider that the penalties should be counted from the day mentioned on the recognition of liability, signed by the Player (August, 24<sup>th</sup>), to the day the Player seized the present Tribunal”*

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

31. Respondent has not submitted an Answer.

#### **5. Jurisdiction**

32. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Since none of the Parties have their seat or domicile in Switzerland, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

33. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.

### **5.1 Arbitrability**

34. 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>1</sup>

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

35. The Contract contains under the heading “Settlement of disputes” an arbitration clause that 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 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 shall decide the dispute ex aequo et bono.”*

36. This arbitration clause included in the Contract and signed by the Parties to the Contract fulfils the formal requirements of Article 178(1) PILA.

---

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

37. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA). As to the scope of the arbitration agreement, the Arbitrator notes that the wording “[a]ny dispute arising from or related to the present contract” in Article 9 of the Contract is very broad<sup>2</sup> and covers this claim.
38. Finally, the Arbitrator, when interpreting the arbitration clause, takes note of Article 18.2 of the BAT Rules, according to which any reference to FAT shall be understood as a reference to the BAT.

## 6. Admissibility

39. In order for this procedure to be admissible, some prerequisites must be fulfilled. First, Respondent must have the capacity to be a party in these legal proceedings. There are serious doubts whether this prerequisite is fulfilled in the case at hand. Claimant himself stated in his RfA that the “*Club’s rulers founded a new ... [club], replacing Tarabari Qom, due to these financial problems ...*”. The IRIBF also stated in its email dated 6 October 2012 that “*Rah va Tarabari Qom does not exist as a legal entity*”. However, an arbitration proceeding presupposes at least two (existing) parties with legal capacity and, therefore, cannot be conducted against a party that ceased legally to exist.
40. This having been said, the Arbitrator does not ignore that there are cases in which claims and obligations of one party (including the arbitration agreement) may be assumed by a successor entity. However, Claimant failed to identify any such successor entity against which these proceedings can be continued. In his RfA, the

---

<sup>2</sup> See for instance BERGER/ KELLERHALS: International and domestic Arbitration in Switzerland, Berne 2010, N 466.

Claimant originally directed his claim also against Jasheh Tosse'eh BC hinting that this was the club that “replaced” Respondent. However, after being requested by the Arbitrator to specify against what legally identity his claim is directed, Claimant declared that he had been informed that no connection existed between the Club and Jasheh Tosse'eh BC and that *“in order for the arbitration procedure to be continued ... the Respondent identity is Club Rah va Tabari [sic] Qom.”* Thus, Claimant made it clear that there is only one “Respondent” in this procedure, i.e. the Club. The latter, however, lacks legal capacity. This clarification was reiterated in Claimant’s letter dated 13 September 2012 in which the latter declared: *“we now only ask for a decision from the BAT, against Rah va Tarabari Qom, one of the Respondents we initially mentioned, and the Club whom Mr. Marquis signed his contract with.”*

41. The Arbitrator’s doubts in relation to Respondent’s legal capacity are supported by the difficulties that were encountered in trying to notify the correspondence to Respondent. No notification to Respondent was possible by email or courier. In addition, all attempts of notification by Claimant failed and – despite the Arbitrator's request in the procedural order dated 27 June 2012 – the Claimant could not provide proof of effective servicing of the documents to the Club. In the absence of a special "Notices" clause in the contract, providing the means and the contact details to be used for a valid delivery of notices in case of dispute, the Arbitrator had no option but to request the assistance of the national federation IRIBF. However, serving the documents via the national federation IRIBF, was likewise unsuccessful. On 14 December 2012, the IRIBF stated that it did not forward the documents to Respondent but to the Sports and Youth office in Qom. On 6 October 2012, IRIBF acknowledged that it had delivered the relevant correspondence to Rah va Talabari Qom but that the latter had ceased to exist as a legal entity. In light of these circumstances, one wonders to whom IRIBF has forwarded the documents.
42. To conclude, the Arbitrator finds – as already announced in his procedural order dated 27 June 2012 – that if the Respondent has ceased to exist as a legal entity and/or if the

serving of the relevant documents on the Respondent is unsuccessful, the claim filed by Claimant must be dismissed on procedural grounds.

## **7. Costs**

43. Article 17 of the BAT Rules provides that the final amount of costs of the arbitration shall be determined by the BAT 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.
44. On 10 April 2013 – considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration, which shall include the administrative and other costs of BAT and the fees and costs of the BAT 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 BAT 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 BAT President determined the arbitration costs in the present matter to be EUR 7,000.00.
45. Considering that Claimant’s claim was rejected on procedural grounds, the Arbitrator holds it fair that the fees and costs of this arbitration be borne in their entirety by the Claimant and that he also be required to cover his own legal costs.
46. Since Respondent did and/or could not participate in these proceedings, no question of contribution to Respondent’s legal fees and expenses arises in this case.



**BASKETBALL**  
ARBITRAL TRIBUNAL

**8. AWARD**

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

- 1. The claim filed by Mr. Claude Marquis against Rah va Tarabari Qom BC is rejected.**
- 2. The costs of this arbitration, which were determined by the President of the BAT to be in the amount of EUR 7000.00, shall be borne by Mr. Claude Marquis.**

Geneva, seat of the arbitration, 16 April 2013

Ulrich Haas  
(Arbitrator)