BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0477/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Ms. Brittany Denson

- First Claimant -

Mr. Zeev Goldansky

- Second Claimant -

both represented by Mr. Joseph Gayer, attorney at law,
41-45 Rothschild Blvd., Tel Aviv 65784, Israel

vs.

Ramat Hasharon B.C.
P.O. Box 1559, Ramat Hasharon 47100, Israel

- Respondent -

represented by Messrs. Dan Shwec and Hagar Zilbershtein, attorneys at law,
Triangular Tower, Floors 39 & 40, Tel Aviv 8701101, Israel

1. The Parties

1.1 The Claimants

1. The First Claimant is a professional basketball player form the USA.

2. The Second Claimant is a professional basketball players' agent from Canada.

1.2 The Respondent

3. The Respondent is a professional basketball club based in Israel.

2. The Arbitrator

4. On 24 December 2013, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Mr. Raj Parker as arbitrator (the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). None of the Parties has raised objections to the Arbitrator's appointment or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

5. On 29 August 2013 the First Claimant, the Second Claimant and the Respondent entered into a contract under which the First Claimant was to play for the Respondent

during the 2013/2014 basketball season (the "Contract"). The Contract contains, among others, the following provisions:

(i) the term of the Contract was from 25 September 2013 until the last official game of the 2013/2014 season (Art. I.1);

(ii) the Contract is a "no-cut" contract:

> *"[t]his is a non-cut fully guaranteed agreement binding for both parties and cannot be terminated before the date of termination.*
>
> *For this purpose all the amounts benefits and terms due to the Player according to this agreement shall be paid to the Player by the Club pursuant to this agreement's terms, even if the Player does not participate for reasons not within his [sic] control (including illness, injury, accident, bereavement and the like) in the Club's activity."*

(Art. I.3. (the "No-Cut Provision"));

(iii) the First Claimant was to sign the Israeli league's standard form agreement:

> *"[f]ull agreement to be adjusted with accordance to FIBA and the Israeli Basketball Federations rules and regulation. The Player shall sign the local Basketball Association standard agreement in which the terms of this agreement shall be included.*
>
> *For avoidance of doubt, in each case of controversy, this agreement's terms and conditions shall prevail and govern."*

(Art. I.4.);

(iv) the First Claimant's salary was to be USD 8,000.00 net per full month "*for the guaranteed period of 6 months totaling [USD 48,000.00] net*" plus USD 267.00 for each additional day (if any) thereafter (Art. II.6.1.);

(v) detailed provisions about the medical examination to be performed, including:

"9. <u>Medical exam, Injury:</u>

9.1 This contract is subjected to the player passing successfully medical check-ups. Upon arrival and within 72 hours the player shall pass the Team's medical examination.

If Player participates in any of Club's practices or games prior to Club fulfilling its obligations immediately above and/or if the Club fails to conduct such examinations and/or if the club fails to notify Player and Player's representative of a failed medical examination during that period – in any of these cases the player shall be deemed to have unconditionally passed his physical examination and the club shall have no claim and/or demand in this matter.

[...]

9.4 In the event that the Player sustains an incapacitating injury or illness during the term of this Agreement, as long as injury and illness incurred due to the Club's related activity made by the Player to the Club that renders the Player incapable of performing in some or all of the remaining games, the Club agrees to meet all payment obligations and terms as though the Player had performed in all games.

In the event of the Player's death during the term of the present Agreement the Club agrees to pay all remaining compensation due to the Player to his estate or beneficiary as though the Player had fully performed minus all compensation and bonuses earned by the Player prior to his death. Should the Club elect to replace the Player with another foreign player at any time during the term of this Agreement, the Club shall continue to pay the Player his guaranteed salary payment for the full term of this Agreement at the times and amounts as specified in this agreement and the Player shall further be entitled the use of the accommodation for a minimum of thirty (30) days."

(Art. II.9);

(vi) the following provisions in relation to late payments:

"16. <u>Breach and Remedies:</u>

16.1 A delay of 10 (ten) days or more in the making of any payment whatsoever that the Club is liable to pay pursuant to this Agreement shall be deemed to be a fundamental breach of this

Agreement, which shall immediately entitle the Player to all monies due under this Agreement.

[...]

16.2 Additionally, Payments which are not made by a date which is 10 (ten) days after the applicable payment date will be subject to a late penalty interest rate of 1% per month.

16.3 Such breach shall occurrence shall permit the Player the right to void the agreement by so indicating in a registered letter and/or e-mail and/or fax to the Club and the Player shall be deemed immediately as "Free Player" and such letter shall constitute as immediate "letter of clearance" regarding the player once presenting proof of sent and receipt by the club fax/email etc.

Accordingly and in case the player applies FIBA and /or Israeli federation in this matter, the club shall have no claims and/or wants and/or refusal right and claims regarding such release in case of breach."

(Art. II.16);

(vii) a dispute resolution clause in the following terms:

"18. This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal. All parties in this agreement (Club, Player and Agent) consent to the jurisdiction of the FIBA Arbitral Tribunal (BAT) relative to any action or procedure that may arise relating to this agreement thus governing any Israeli Basketball federation tribunal. Accordingly in case of dispute between club – player – agent the FIBA – Bat shall have full jurisdiction and the club shall be prohibited from any claim and/or refusal whether based on the Israeli federation regulations.

All parties to this agreement accept the present English version of this contractual agreement as fully binding under both Israeli and FIBA laws and guidelines."

(Art. II.18);

(viii) the following provisions in relation to the First Claimant's obligations:

> *"22. The Player declares that she is in perfect health and fitness as required for a Player in her position and role in a professional league, and that she is able to play and train or practice with the team.*
>
> *[...]*
>
> *24. The player shall obey and be subjected to the club's disciplinary codex subjected to the league and federation disciplinary regulations. And will sign the bylaws document of the club."*

(Art. III); and

(ix) the following provisions in relation to the Second Claimant:

> *"26. The club acknowledges that throughout the negotiation of the present contract the player's interests are represented by: the Canadian agent Zeev Goldansky MG sports management Group, Inc. (FIBA License number 2011023995). The club will pay the following total agent fee of 4,800 USD + 10% of any partial salary that was added after 6 months, to be paid as follows: to Zeev Goldansky to be paid by November 10th 2013 and will be paid in full regardless if the player finishes the season or not.*
>
> *29. The Club agrees that non-payment of the agency fee will permit the Player the right to void the agreement by so indicating in a registered letter/fax/email to the Club. The Club agrees that it will at no time discuss the proposed terms of an agreement for the next season with the Player without the expressed written consent of the above mentioned representatives."*

(Art. IV).

6. On 3 October 2013 the First Claimant and the Respondent signed another contract which appears to conform to Appendix A to the Israeli basketball league's "Budget Control Regulations" (the "Budget Control Agreement"). The Budget Control Agreement contains various undertakings on the part of the First Claimant and the Respondent, and it contains, among other things:

(i) the Second Claimant must do "*everything required in order to maintain the highest possible degree of physical fitness*" (clause 3);

(ii) a dispute resolution clause in the following terms:

> *"7. Arbitration*
>
> *a. The Parties hereby agree that any disputes between the Team and the Player or Between the Player and the Team, in any matter related to the provisions of this Agreement, shall be brought before an arbitrator who shall be nominated by virtue of the regulations of the Association's Institute of Arbitration.*
>
> *b. The signing of this contract, will constitute the signing of an arbitration agreement as set forth in the Arbitration Law 5728-1968 (hereinafter: "Arbitration law").*
>
> *c. The arbitration shall proceed in accordance with the provisions of the regulation of the Association's Institute of Arbitration.*
>
> *d. The parties agree that the arbitration award can be appealed, before another arbitrator of the Association's Institute of Arbitration, as aforesaid in section 21a of the Arbitration Law 5728 – 1968. The jurisdiction over the request to revoke the arbitration award according to the Arbitration Law, which refers to the arbitration the parties had held, will be given to the court with the material jurisdiction for the matter and which is in the region of jurisdiction in which the team operates"*

(clause 7);

(iii) in relation to insurance and injury, "*[t]he Team is responsible for the Player's insurance in case of injury. The Player will sign all pertinent documents*" (clause 8; this clause was written in manuscript on a lined page under the heading "*Complentry [sic] Provisions*");

(iv) a provision (clause 9(d)) that the Budget Control Agreement:

> *"as it shall be submitted to and approved by the Authority in the framework of the approved budget, shall be the only binding agreement between the Parties, and any other agreement which has not and/or shall not have been submitted to nor approved by the Authority as stated above, shall be utterly invalid, null and void and the Parties shall not act in accordance therewith".*

7. On a date which has not been stated in these proceedings, but which the Arbitrator understands to have been before or shortly after 28 October 2014 (being the date of the first game of the regular season for 2013/2014), the Respondent informed the First Claimant that it considered her engagement with the Respondent was over and the Respondent considered that it had no further obligations to her.

3.2 The Proceedings before the BAT

8. The proceedings in this case have involved numerous submissions, procedural requests and enquiries. These various matters are recorded below.

(i) The Claimants filed the Request for Arbitration on 10 December 2013, having paid the non-reimbursable handling fee of EUR 2,000.00 on 25 November 2013. The Arbitrator was appointed on 24 December 2013.

(ii) On 2 January 2014 the Advance on Costs was fixed at EUR 8,000.00 payable by the First Claimant (EUR 3,500.00), the Second Claimant (EUR 500.00) and the Respondent (EUR 4,000.00). None of the Parties paid their share of the Advance on Costs by the first set deadline of 17 January 2014, and on 27 January 2014 they were requested urgently to make their respective payments by no later than 7 February 2014. The Claimants paid EUR 3,945.31 in respect of their shares of the Advance on Costs on 18 February 2014. On 27 February 2014 the Claimants were given until 10 March 2014 to pay the Respondent's share of the Advance on Costs. On 17 March 2014 the Claimants paid EUR 3,956.01 in respect of the Respondent's share of the

Advance on Costs.

(iii) On 14 January 2014 at its request, the Respondent was given an extension of time to file its Answer to the Request for Arbitration until 7 February 2014. On 12 February the Respondent requested a further extension and on 13 February the Arbitrator granted a further and final extension for the Respondent to file its Answer by 26 February 2014. The Respondent still did not file an answer.

(iv) On 3 March 2014 the Respondent filed a substantial unsolicited submission titled "*[a] Motion for threshold dismissal of the claim*", which was not an Answer to the Request for Arbitration but was a request that these proceedings be dismissed as a preliminary matter (the "Motion to Dismiss"). The Motion to Dismiss included substantive formal pleadings which have apparently been submitted in other arbitral proceedings between the Respondent (as claimant) and the First Claimant (as respondent) (see paragraph 12(iv) below).

(v) On 17 March 2014 the Claimants wrote to the BAT in relation to the payment of the Respondent's share of the Advance on Costs and included in their letter an unsolicited submission relating to the First Claimant's then current employment.

(vi) On 3 April 2014 the Claimants wrote to the BAT, seeking information as to whether an Answer had been filed.

(vii) On 22 April 2014 the BAT wrote to the Parties circulating the three unsolicited communications that had been submitted, requesting a further Advance on Costs in view of the significant volume of material already submitted (this was subsequently paid by the Claimants) and including questions to the Parties

from the Arbitrator (the "First Procedural Order"). The Claimants replied to the First Procedural Order on 27 April 2014, and the Respondent replied on 7 May 2014, both in compliance with the set deadline.

(viii) On 7 May 2014 the Respondent made a further unsolicited submission, this time requesting permission to file an Answer to the Request for Arbitration.

(ix) On 18 May 2014 the Respondent made yet another unsolicited submission in the form of an affidavit made by a Mr. Arni Barda (the "Barda Affidavit").

(x) On 21 May 2014 the Arbitrator asked further questions of the First Claimant and the Respondent (the "Second Procedural Order"), and gave permission to the Respondent to file an Answer by 4 June 2014. The Claimants replied on 22 May 2014. On 22 May 2014 the Respondent requested an extension until 25 June 2014 and this was granted. On 25 June the Respondent requested a further extension until 2 July 2014; the Arbitrator granted this extension, making clear that it would be the final extension.

(xi) The Respondent submitted its Answer to the Request for Arbitration on 2 July 2014.

(xii) On 30 July 2014 the Claimant wrote to the BAT Secretariat seeking information as to whether the Answer had yet been filed.

(xiii) On 6 August the BAT Secretariat circulated the Answer and questions from the Arbitrator to the Claimants (the "Third Procedural order"). The Claimants replied, in compliance with the set deadline, on 11 August 2014.

(xiv) On 5 October 2014 the Claimants wrote to the BAT Secretariat requesting a decision in these proceedings. The following day the BAT wrote to the parties

informing them that the exchange of documents was completed and requesting detailed accounts of costs by 13 October 2014. Both parties provided accounts of costs (albeit not detailed ones) in compliance with that deadline. On 15 October 2014 the BAT Secretariat gave the Parties each an opportunity to comment on the other's account of costs by 22 October 2014, and the Respondent did so.

4. The Positions of the Parties

4.1 The Claimants Position

9. The Claimants submit in essence that:

(i) during the fourth pre-season game before the 2013/2014 season, the First Claimant injured her [First Claimant's body part], after which she was given an "MRI" scan. The medical advice following the MRI scan was that the First Claimant should take four weeks rest, after which she could play again. The MRI scan also showed that the First Claimant had previously had [medical procedure] on the same [First Claimant's body part]. That [medical procedure] had been seven years before the events at issue in these proceedings;

(ii) despite the medical advice, the Respondent informed the First Claimant "*that her services were no longer required and that the [Respondent] had no intention of honouring the [Contract]*". In so doing, the Respondent argued that it had been dishonest of the First Claimant not to mention the previous [medical procedure] to her [First Claimant's body part];

(iii) the Respondent put pressure on the First Claimant to leave by refusing her

medical treatment and saying that Israel's immigration authority would remove her;

(iv) in fact the previous [medical procedure] was of no consequence at all because the First Claimant had been able to play the preceding two seasons, including in games against the Respondent, with "*great success*";

(v) the First Claimant had not informed the Respondent of the surgical history because it "*did not seem relevant*", and in omitting to mention it the First Claimant acted honestly and in good faith;

(vi) the Respondent's actions were a fundamental breach of the Contract, entitling the First Claimant to payment of all monies due under the Contract;

(vii) in addition, the Contract was a 'no-cut' contract, and so the Respondent is unable to terminate it in the manner it has purported to;

(viii) in the circumstances the First Claimant is entitled to payment of all monies due under the Contract (being USD 48,000.00), plus 1% interest per month (under Art. I.16.2 (see paragraph 5(vi) above)); and

(ix) the Second Claimant is entitled to the full agent's fee payable under the Contract regardless of whether the First Claimant finishes the season (Art. IV.26 (see paragraph 5(ix) above)), and so the Second Claimant is entitled to payment of USD 4,800.00.

10. The Claimants specifically requested that the Arbitrator consider Paragraph 27 of Book 1 of the FIBA Internal Regulations 2010 (the "FIBA Regulations"), which forms part of Chapter III of that Book (*FIBA Code of Ethics*), under which "*basketball parties*" must "*Honour all contracts (both personal and business) related to basketball and not*

encourage others to break such contracts".

11. In their request for relief, the Claimants ask that the Arbitrator order the Respondent to:

    (i) pay the First Claimant USD 48,000.00 plus interest at 1% per month;

    (ii) pay the Second Claimant USD 4,800.00; and

    (iii) pay the First Claimant USD 5,000.00 in legal fees plus the costs of the arbitration.

4.2 The Respondent's Position

12. As a preliminary matter, the Respondent in the Motion to Dismiss submitted that the BAT does not have jurisdiction to determine this dispute, relying on the following arguments:

    (i) the First Claimant and the Second Claimant signed the Budget Control Agreement after they signed the Contract, and the Budget Control Agreement "overrides" the Contract;

    (ii) clause 7 of the Budget Control Agreement (see paragraph 6(ii) above) confers jurisdiction for any disputes under the Budget Control Agreement on the Israeli Basketball Association's Institute of Arbitration (the "IBAIA");

    (iii) the present dispute is governed by clause 7 of the Budget Control Agreement and accordingly the IBAIA, and not the BAT, has jurisdiction to hear it;

    (iv) in any event, the Respondent has already commenced proceedings before the

IBAIA (filed on 19 November 2013), in which the Respondent is claimant and the First Claimant is named as respondent (the "IBAIA Proceedings"). The First Claimant's legal representative has been notified of the IBAIA Proceedings;

(v) the present proceedings should not have continued because there were "serious reasons to stay the proceedings", for the purposes of Art. 186 of the Swiss Private International Law Act ("PILA");

(vi) IBAIA is an appropriate forum to hear this dispute;

(vii) if the IBAIA Proceedings and the present proceedings both continue then there is a risk that they will result in conflicting outcomes, which will create confusion and require additional legal work; and

(viii) continuing these proceedings may involve presenting witnesses and, given that most of the witnesses are in Israel, these proceedings "*will increase the costs of the proceedings significantly and may inflict a very heavy financial burden on the Parties and on the defendant in particular*".

13. After the BAT informed the Parties that the Motion to Dismiss had been denied, the Respondent eventually submitted the Answer, in which it argued that:

(i) before the Contract was signed, the Second Claimant stated expressly to the Respondent's representative that the First Claimant was in excellent physical condition and able to play a full game without any problem;

(ii) the Respondent had enquired about that issue specifically because it was aware that the First Claimant had been a bench player in the 2012/2013 season and in that season "*never played more than 22 minutes per game*".

Since the Respondent was only allowed three foreign players for the 2013/2014 season, it could not afford to take on a foreign player who could not play a full game. In these circumstances, but for the Second Claimant's representations the Respondent would not have engaged the First Claimant;

(iii) the Contract contains a declaration that the First Claimant is in "*perfect physical health and fitness*" (Art. III.22 (see paragraph 5(viii) above));

(iv) the Budget Control Agreement provides that the Second Claimant must do "*everything required in order to maintain the highest possible degree of physical fitness*" (clause 3 (see paragraph 6(i) above)); and

(v) the declaration in the Contract was false, because the First Claimant was concealing her true physical condition and, in particular, a [First Claimant's injury] which prevented her from "*fully carrying out her role*" and that she had had two [medical procedures] on her [First Claimant's body part];

(vi) the First Claimant's conduct and insubordination worsened her condition still more;

(vii) in light of the Claimants' conduct and the fact that the Respondent entered the Contract based on false representations, the Contract "*should be null and void*";

(viii) in agreeing for the First Claimant to sign for Maccabi Ramat Hen BC ("Maccabi"), the Claimants sought to cause damage to the Respondent by agreeing an unreasonably low salary (thereby minimising the mitigation of any loss suffered by the First Respondent) and thus exposing the Respondent to greater liability in these proceedings (this aspect of the argument is said to be supported by the Barda Affidavit);

(ix) the Claimants' conduct has caused great damage to the Respondent because it left the team with only two foreign players (which may have caused the loss of an important game and may make it more difficult to attract subscribers and sponsors, and damages fans' trust in the team), it forced the Respondent to look for a replacement late, when only players of a lower calibre were available, and the Respondent's insurance cover in respect of the First Claimant did not respond because of her false declarations;

(x) the Second Claimant's claim for his agent's fee is unacceptable in light of his conduct in making misrepresentations before the Contract and in seeking to expose the Respondent to increased liability, and also because he received commission for the First Claimant's contract with Maccabi Ramat Chen.

4.3 The Parties' Further Submissions

4.3.1 The First Procedural Order

14. In the First Procedural Order, the Arbitrator asked the First Claimant:

(i) to list all of the [medical procedure] and medical treatment done on her [First Claimant's body part], no matter when;

(ii) to respond to the allegation that the medical examination revealed weaknesses in her [First Claimant's body part] and that the Respondent devised a remedial plan with which she did not cooperate;

(iii) to confirm whether she completed an insurance questionnaire indicating that she had never had [medical procedure];

(iv) if she had previously had [medical procedure] on or any difficulties with her [First Claimant's body part], to explain why she did not disclose these matters before signing the Contract and why (if applicable) she completed the insurance questionnaire indicating that she had never had [medical procedure];

(v) to say whether she had entered into any other form of agreement with Maccabi apart from the "Budget Control Agreement" submitted to the BAT and, if applicable, to provide a copy and, in any case, confirm whether or not a gross salary of NIS 42,875.00 is the only income she expects to receive for her employment with Maccabi.

15. The First Claimant answered that:

(i) she had [medical procedure] on her [First Claimant's body part] (specifically, the [specific part of First Claimant's body part]) in 2005 and had had no problems since. She treated the [First Claimant's body part] properly, e.g. by icing it after games, but the [medical procedure] was the only treatment until she was injured in October 2013;

(ii) she passed the Respondent's initial medical examination with no problems. She was subsequently examined by the Respondent's trainer and, in response to a question, told the trainer that she had had [medical procedure]. The trainer saw the scars, which cannot be hidden. The trainer said she wanted to improve the First Respondent's range of motion a little. The team had a personal trainer with whom there were group sessions for [specific body parts]. The First Claimant went only to [First Claimant's body part] sessions as only those were relevant to her. The trainer cancelled one session, and was very late for another. On a third occasion (it is not clear whether this was a scheduled session) the First Claimant told the trainer that she was extremely

tired because of a hard game the previous day. She never refused to work out and practiced and played without fail while she was with the team;

(iii) she denied completing the insurance questionnaire in a manner which indicated that she had never had any [medical procedure]:

> *"I completed the physical papers, I didn't check the box. Too be honest I didn't even realize. If you know anything about [medical procedure] this isn't something that can be hidden the scars are visible. As I stated earlier the same day of my medical physical I had another examination with the team's trainer. If my body was unfit for performance they could terminated my contract immediately it was still within the 72hrs. There was nothing wrong with me I could perform. And I did just that the whole preseason playing in 4 scrimmage games and all practices"*

(iv) the Respondent approached the First Claimant when she had already signed with a team in Turkey and, based on their impression of her based on the previous two years in the Israeli league. It never occurred to her that she ought to mention [medical procedure] that happened in 2005, because it was not then (in 2013) a factor; and

(v) "*[n]o I haven't signed any other contract*". This answer was supported by a written statement signed by the chairwoman of Maccabi which says that the standard form agreement submitted with the Request for Arbitration was the only contract that the First Claimant had entered into with Maccabi.

The Respondent's answers set out above were contained in a typed statement which is written in the first person and is described in a letter from the Claimant's legal representative as being the First Claimant's "*own words*"; it is not signed by her and her name does not appear on it.

16. In the First Procedural Order, the Arbitrator also asked the Second Claimant to confirm whether he told the Respondent in a meeting that the First Claimant was "*in excellent*

physical shape and [...] capable of playing for a full game without any problems".

17. The Second Claimant answered:

> *"here is my answer for the bat.*
>
> *ramat hasharon asked me to get my client from the job in turkey which she was under contract prior to join ramat hasharon. this question was never brought ot my attention not even once . they know my client very well she played 2 years in the same club very well with no injury."*
>
> (sic).

4.3.2 The Second Procedural Order

18. In the Second Procedural Order, the Arbitrator asked the First Claimant (again) to confirm whether or not a gross salary of NIS 42,875.00 was the only income she expected to receive for her employment with Maccabi. In response, the First Claimant confirmed that the gross salary was the only income she expected to receive (and, at that stage, had received).

19. In the Second Procedural Order, in addition to granting the Respondent permission to submit an Answer to the Request for Arbitration, the Arbitrator also informed the Respondent that he was not persuaded that expert evidence would be useful and that if the Respondent decides to submit expert evidence it must explain why it is necessary and what the Respondent intends to prove by it.

20. When submitting the Answer, the Respondent said that the main disagreement between the Parties was the First Respondent's physical condition before she arrived at the Respondent, and expert evidence would be required in order for the Arbitrator to determine that issue.

4.3.3 The Third Procedural Order

21. In the Third Procedural Order, the Arbitrator asked the Claimants to comment on:

    (i) the allegations in the Barda Affidavit; and

    (ii) the Respondent's assertion that Mr. Barda was a "*neutral and motiveless party*".

22. In response, the Claimants submitted that:

    (i) the Barda Affidavit actually reinforces the Claimants' argument that the First Claimant did not arrive at the Respondent concealing an injury, and she does not have one, because if the First Claimant was injured or unable to perform while at Maccabi then he would have said so. It is false and absurd to suggest that the Claimants sought to expose the Respondent to additional liability by minimising the First Claimant's salary. The first person to be at risk of loss from such an approach would be the First Claimant; and

    (ii) while Mr. Barda himself may be neutral, the Barda Affidavit has been produced by the Respondent's lawyers and they are not neutral. The affidavit twists facts and presents them out of context, and "*is an artwork made by lawyers – not the work of a layman and a simple coach such as Mr. Barda*". Having said that, there are few coaching positions at women's clubs in Israel and "*it is not farfetched that Mr. Barda would like to remain in good relations with the Respondent, should the time arrive where he might find himself in search of a new team to coach*".

5. Jurisdiction

23. 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*". Hence, this BAT arbitration is governed by Chapter 12 of PILA.

24. 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

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

5.2 Formal and substantive validity of the arbitration agreement

26. Art. II.18 of the Contract is an arbitration clause in favour of the BAT. It reads as follows:

> *"18. This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal. All parties in this agreement (Club, Player and Agent) consent to the jurisdiction of the FIBA Arbitral Tribunal (BAT) relative to any action or procedure that may arise relating to this agreement thus governing any Israeli Basketball federation tribunal. Accordingly in case of dispute between club – player – agent the FIBA – Bat shall have full jurisdiction and the club shall be prohibited from any claim and/or refusal whether based on the Israeli federation regulations.*

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

All parties to this agreement accept the present English version of this contractual agreement as fully binding under both Israeli and FIBA laws and guidelines."

27. The Contract is in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) of the PILA). In particular, the wording "*any action or procedure that may arise relating to this agreement*" in Art. II.18 clearly covers the present dispute.

28. As mentioned above (see paragraph 12) the Respondent in the Motion to Dismiss objected to the BAT's jurisdiction. On 22 April 2014 the Arbitrator informed the Parties that he had concluded that he did have jurisdiction in this case. The reasons for that conclusion are set out below:

(i) The Parties have entered into two agreements and each of those agreements provides for something different to happen if the Parties should get into a dispute in relation to that agreement. The Contract provides for Arbitration under the BAT Rules "*relative to any action or procedure that may arise relating to [it]*"; the Budget Control Agreement provides for arbitration under the auspices of the IBAIA in relation to "*any matter related to the provisions of [the Budget Control Agreement]*".

(ii) The Contract, at least in the absence of the Budget Control Agreement, conferred jurisdiction on the BAT for the determination of disputes. The key question for these purposes is whether the Budget Control Agreement varied or terminated the Contract so as to alter the jurisdiction which it had conferred on the BAT.

(iii) The Budget Control Agreement contains a provision which on its face provides that if the Contract was not part of the Budget Control Agreement as submitted

to the Budget Control Authority then it is not binding between the parties (clause 9(d); see paragraph 6(iv) above).

(iv) Meanwhile, the Contract includes terms which suggest that it and its dispute resolution provisions are intended to survive notwithstanding what is said in the Budget Control Agreement. In particular:

(A) the Contract expressly contemplates that something like the Budget Control Agreement might be signed and provides that in the event of conflict between the agreements the Contract's terms shall prevail (Art. I.4 (see paragraph 5(iii) above)); and

(B) the dispute resolution provision in the Contract gives express priority to BAT over the Israeli Basketball Association's Institute of Arbitration (Art. II.18 (see paragraph 5(vii) above)).

(v) The Budget Control Agreement is clearly, as the Respondent has said in submissions, an agreement in a standard form. The Contract meanwhile, while it may well be based on one or more precedents, is an agreement which appears to have been negotiated between its parties. Particular care appears to have been taken to ensure that the Contract's terms generally, and its conferral of jurisdiction on the BAT in particular, takes effect even over any possible submission to an "*Israeli Basketball federation tribunal*" (which must include the IBAIA), in relation to which "*the club shall be prohibited from any claim and/or refusal whether based on the Israeli federation regulations*" (sic) (Art. II.18 (see paragraph 5(vii) above)).

(vi) Notwithstanding the Contract's provisions in this regard, it would be possible for the parties to it to vary it by agreement so that the Contract's dispute resolution provisions are altered and jurisdiction is no longer conferred on the

BAT. The question is whether the Budget Control Agreement did that.

(vii) The Arbitrator considers that, in order for the Budget Control Agreement to have altered or varied the Contract's provisions that the BAT's jurisdiction will prevail over that of the Institute, it would need to do so in clear, express, and specific terms. In light of the provisions of the Contract which are referred to above, the Arbitrator is not persuaded that words of general effect in a standard form agreement, and in particular those at clause 9(d) of the Budget Control Agreement, should be interpreted as being agreed and intended by the parties to the Budget Control Agreement to override the words of specific effect in the pre-existing, negotiated agreement between the same parties and the Second Claimant.

(viii) The Arbitrator therefore concluded that the Contract, and its dispute resolution provision in particular, was not varied or overridden by the Budget Control Agreement. The BAT has jurisdiction to determine any dispute in relation to the Contract and the Respondent was expressly prohibited from objecting to that.

29. The Arbitrator notes that the Respondent continued to take an active part in these proceedings after the Arbitrator's decision in this regard was communicated to the Parties.

6. Discussion

6.1 Applicable Law – ex aequo et bono

30. 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".*

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

> *"Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law."*

32. Art. II.18. does not state expressly that the arbitrator will decide the dispute *ex aequo et bono*. However, it does make clear that the Contract is "*to be governed by and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal*", and that "*Bat shall have full jurisdiction . . .*"; moreover, the Contract is not expressed to be governed by any particular substantive law. In these circumstances, the Arbitrator finds that the Parties intended that any dispute which fell to be determined in accordance with Art. II.18 would be determined in the usual way for an arbitration under the BAT Rules, i.e. *ex aequo et bono*.

33. In light of the above, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

34. 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*[2] (Concordat),[3] 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."*[4]

35. 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 circumstances of the case*".[5]

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

37. In light of the foregoing matters, the Arbitrator makes the following findings.

6.2 Findings

38. As indicated in the foregoing sections of this award, there have been several substantive submissions in these proceedings. It is not necessary, in order to determine this dispute, for the arbitrator to refer to and make findings on all of the

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2 That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

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

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

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

various matters on which the Parties have made submissions. Accordingly, in this section the Arbitrator sets out his analysis in relation only to those matters on which it has been necessary for him to make findings in order to determine this dispute.

6.2.1 The Second Claimant's pre-contract representations and their effect

39. The Parties have submitted conflicting accounts of the discussions between the Second Claimant and the Respondent's representatives before the Contract was signed. In particular, the Respondent alleges that the Second Claimant made a clear representation that the First Claimant was in excellent physical condition and was able to play full games without a problem; meanwhile, the Second Claimant denies the matter having been raised. No documentary evidence of this alleged event has been submitted, and so the Arbitrator must decide which of the two conflicting accounts he accepts.

40. There is not much to distinguish between the relative plausibility of the two accounts. However, the Arbitrator notes and accepts the Respondent's submissions with regard to the limited number of foreign players it was allowed to retain in the relevant season. Having accepted those submissions, the Arbitrator accepts that the Respondent's version of events (i.e. that it did specifically ask the Second Claimant about the First Claimant's fitness and ability to play a full game, and that the Second Claimant gave an affirmative answer) is the version which is true. Accordingly, the Arbitrator finds that a representative of the Respondent specifically asked the Second Claimant, before the Contract was signed, about the First Claimant's fitness and ability to play full games, and the Second Claimant stated that the First Claimant was in excellent physical condition and able to play full games without a problem.

41. The Arbitrator also finds (accepting the Respondent's submission) that if the Second Claimant had not represented that the First Claimant was fit and could play a full game

then the Respondent would not have entered into the Contract. In light of the circumstances and the Parties' knowledge and understanding, the Arbitrator further finds that the Second Claimant either knew, or should have known and is therefore deemed for these purposes to have known, that the Respondent would rely on his representation as to the First Claimant's fitness and ability to play full games (alongside the conclusions of a medical examination to be conducted on its behalf).

42. Finally in relation to this issue, the Arbitrator finds that in entering into discussions with the Respondent before the Contract was signed, and in particular in making this representation, the Second Claimant was acting on the First Claimant's behalf and the First Claimant must accept the consequences of the Second Claimant's conduct.

6.2.2 The First Claimant's true state of fitness

43. The Respondent has submitted that it terminated the Contract because the representations as to the First Claimant's fitness discussed above were not true, and in fact she was not in excellent physical condition and able to play full games without a problem; indeed, she was carrying an injury which affected her performance. The respondent sought to support this submission with a medical opinion, signed by a [Doctor's name and title]. The medical opinion:

(i) is dated 1 May 2014, several months after the incidents in question;

(ii) does not indicate that [Doctor] ever examined the First Claimant or observed her playing or practicing;

(iii) states that [Doctor] had been informed by the Respondent's medical staff that the First Claimant had a limited range of motion;

(iv) states that the MRI scan showed that the First Claimant "[language from MRI

discussing specifics of Player's injury]";

(v) opines that the extension limitation (which he had not observed but had been informed of) "*is most probably the result of the* [medical procedure on Player's body part]";

(vi) states that [Doctor] recommended continued rehabilitation and did not give approval for the First Claimant to play; and

(vii) states that [Doctor] explained to the Respondent "*the great risk of continuing playing with this findings and the risk of recurrent injuries and missing games and practices*".

44. Since the medical opinion is not stated to be based on an examination of the First Respondent, and since [Doctor] has not stated that he had observed the First Respondent or her alleged limited range of movement, the medical opinion is of very limited value as evidence that the First Claimant was carrying an injury and was unable to play a full game without a problem. The Arbitrator does accept that it is supportive of the Respondent's position in a very broad sense, because it does represent a medical opinion that a limited range of motion of the sort alleged in this case could be the result of [previous medical procedure], and that it could reflect a broader inability to play basketball at the highest level, certainly for whole games. However, the medical opinion has not been decisive in the Arbitrator's findings on this issue.

45. The Claimants have sought to rebut the Respondent's arguments and submissions on this issue, and in particular the Arbitrator notes the Claimants' submissions that:

(i) the First Claimant had played in the previous two seasons "*with great success*" and "*started her term with the [Respondent] in a good physical condition*" (Request for Arbitration, paragraphs 8 and 13);

(ii) on arrival at the Respondent the First Claimant "*was fit and could perform*", and she "*has played ever since December with [Maccabi]*" (Claimants' response to the First Procedural Order, paragraphs 1.3 and 1.4);

(iii) "*the entire month I was there, I and another player were the only two players on the team to never sit out of a workout or miss a scrimmage for any reason. I practiced and played with no problem*" and "*I've played all throughout college and 5yrs professional with no problem*" (First Claimant's statement in response to the First Procedural Order, paragraphs 2 and 4);

(iv) the Barda Affidavit "*only reinforces the Claimants' arguments: that Claimant 1 had not been injured and had played a full season without any problems . . .*" (Claimants' response to the Second Procedural Order, paragraph 3); and

(v) in the Claimants' response to the Third Procedural Order, at paragraph 1.1:

> *"In the event she had suffered from an injury or had had any problems, Mr. Barda, whose affidavit had been submitted only after the end of the season, surely would have mentioned so, but his failure to mention any disability, injury or even the slightest incapacity from which Claimant 1 suffered, and his failure to argue anything against the Claimants' argument that Claimant 1 had played all along without any problems, only proves that Claimant 1 had been just fine and that the allegations regarding tan injury are simply untrue."*

46. The Arbitrator notes that while each of the statements referred to above appears to be intended to refute the Respondent's submission that the First Claimant was not in excellent physical condition and able to play a full game without problem, not one of them directly and fully contradicts that allegation. The Claimants have not submitted, in clear and specific terms, that the First Claimant arrived at the Respondent fully fit and able to play full games without a problem. Neither has it been stated that that is what she did, after leaving the Respondent, at Maccabi.

47. In this regard, the Arbitrator notes that the statement of Ms. Ora Glazer, Maccabi's chairwoman, which was submitted in support of the Claimants' responses to the First Procedural Order, does not state that the First Claimant was fully fit and had been playing full games. The Arbitrator also notes that the First Claimant's contract with Maccabi contained an express provision that Maccabi would be able to terminate the contract without further responsibility to the First Claimant if she suffered "[an injury] *related to* [Player's previous injuries]". The Arbitrator considers that the relatively low salary that the First Claimant obtained at Maccabi is at least as likely to reflect relatively low expectations as to physical performance (e.g. that the First Claimant may not be expected to play full games, at least not consistently) as it is likely to reflect the alleged desire to limit the Claimants' mitigation and, thereby, to increase the Respondent's liability. Beyond that observation, the Arbitrator makes no finding as to the truth of the allegations in the Barda Affidavit and does not consider it necessary to do so.

48. Again, there is not much if anything to distinguish the plausibility of the two conflicting accounts of this issue. However, the Arbitrator considers that if the Claimants and their legal representatives were able to state in clear and express terms that the first Claimant arrived at the Respondent in excellent physical condition and able to play full games without problems, and that that is what she went on to do at Maccabi, then they would have done so. Accordingly, having considered all of the submissions and evidence on this issue, the Arbitrator is satisfied that the First Claimant was not in excellent physical condition and able to play full games without problems when she arrived at the Respondent, and finds accordingly.

49. Finally in relation to this issue, the Arbitrator finds that, in light of his findings as to the First Claimant's true state of health and fitness when she arrived at the Respondent, the Second Claimant's representation discussed at paragraphs 39 to 42 above was a misrepresentation.

6.2.3 The medical examination

50. The Arbitrator has concluded that the Second Claimant made a misrepresentation as to the First Claimant's fitness. However, the Arbitrator also notes that a medical examination was conducted shortly after the First Claimant's arrival, and that the Contract only became effective upon the First Claimant passing that examination (Art. II.9.1 – see paragraph 5(v) above). The Arbitrator considers that, in light of the representation made to the Respondent, and in light of the circumstances affecting the Respondent (in particular the apparent constraints on hiring foreign players), the Respondent was entitled to place reliance on the Second Claimant's pre-contractual representations. Nevertheless, that did not diminish the need for the Respondent to conduct the medical examination with appropriate diligence, and otherwise to take reasonable measures to protect itself against the risk of undisclosed injury or infirmity (that is, to detect the Second Claimant's misrepresentation).

51. It is not disputed that the First Claimant passed the Respondent's medical examination. The Parties' evidence suggests that there was a subsequent examination or discussion with a trainer employed by the Respondent. That examination or discussion itself appears to have been reasonably detailed and to have led to specific findings and some sort of remedial steps; however, it was not the procedure which mattered for the purposes of Art. II.9.1, and the Arbitrator makes no finding in respect of it.

52. The Arbitrator notes the Claimants' have made assertions that scarring from the [Player's medical procedure] that the First Claimant has had is visible (see, for example, the First Claimant's answers to the First Procedural Order: "*[i]f you know anything about* [Player's medical procedure] *this isn't something that can be hidden the scars are visible*"). As explained below (see paragraph 53), the Arbitrator considers the detectability or otherwise of the [medical procedure] to be irrelevant in this case to the question of whether the Respondent conducted the medical examination with appropriate diligence. However, in light of the Claimants' submissions on the point, the

Arbitrator makes the following observations:

(i) it may be that [First Claimant's medical procedure] generally left prominent scars at the time that the First Claimant had her [medical procedure]. However, the Arbitrator has not received evidence on which he could conclude that, at the time of the medical examination in this case, all [medical procedure] would leave prominent scars. Therefore, the Arbitrator cannot conclude that the only appropriate or definitive means of detecting prior [medical procedure] of this type is to look for scarring; and

(ii) the Claimants have not submitted specific evidence that the First Claimant's [medical procedure] has left scars on her which were visible at the time of the medical examination, and have not submitted photographs of the First Claimant's scarring. In the circumstances, even if it were relevant, the Arbitrator would not be able to make any finding as to whether the First Claimant's [medical procedure] has left scars which were prominent and from which the medical examiner ought to have realised that the First Claimant had had [medical procedure].

53. The Arbitrator has found that the Second Claimant, on behalf of the First Claimant, made a misrepresentation to the effect that the First Claimant was in excellent physical condition and able to play full games without a problem. In light of that, the relevant question about the medical examination for the purposes of this dispute is not whether the medical examination was conducted with appropriate diligence to detect the undisclosed [medical procedure], but whether it was conducted with appropriate diligence to show that the First Claimant was not in excellent physical condition and able to play full games without a problem (that is, to detect the Second Claimant's misrepresentation).

54. The Claimants have not submitted, at least not in clear terms and not by reference to

any specific matters, that the medical examination was not appropriately thorough. In fact, the Claimant's evidence and the Respondent's evidence suggests that the medical examination was sufficiently thorough to detect some limitations in the First Claimant's movement, which appears to have been acted upon. In light of the evidence submitted to him on the issue, the Arbitrator seen no reason to doubt that the medical examination was conducted with appropriate diligence.

6.2.4 The effect of the Second Claimant's misrepresentation

55. The Arbitrator has found that:

(i) the Respondent asked the Second Claimant about the First Claimant's fitness and ability to play full games, and the Second Claimant stated that the First Claimant was fully fit and able to play full games;

(ii) if the Second Claimant had not made that representation then the Respondent would not have entered into the Contract;

(iii) the Second Claimant either knew, or should have known and is therefore deemed to have known, that the Respondent would rely on his representation as to the First Claimant's fitness and ability to play full games;

(iv) the Second Claimant was acting on the First Claimant's behalf and the First Claimant must accept the consequences of the Second Claimant's conduct;

(v) the Second Claimant's representation was not true; and

(vi) the Arbitrator has no reason to doubt that the Respondent took steps to discover the Second Claimant's misrepresentation which were appropriate in the circumstances.

56. The Arbitrator notes the No-Cut Provision, and the Arbitrator believes that such provisions provide a valuable degree of security for players, which players are frequently able to negotiate with clubs. Where players are able to negotiate no-cut provisions, those terms represent crucial aspects of the relationship between the player and the club and, accordingly, it is particularly important that they be adhered to. This can leave a club with substantial payment obligations to a player who, in the club's opinion (which may be reasonable) turns out not to be worth the salary in question; however, in light of the importance of the terms, arbitrators exercising an *ex aequo et bono* jurisdiction nevertheless find it necessary in many cases to enforce no-cut provisions, even though it is costly to clubs. The key question here is whether, in all the circumstances of this case, the Arbitrator acting *ex aequo et bono* should uphold the No-Cut Provision, leaving the Respondent exposed to its payment obligations to the Claimants.

57. The Arbitrator considers that, in light of his findings summarised at paragraph 55 above, he cannot, acting *ex aequo et bono*, enforce the No-Cut Provision. The Arbitrator has reached that conclusion in light of the following observations:

(i) the Respondent in agreeing the No-Cut Provision accepted risks that it might have misjudged how good the First Claimant was or how well she would fit into the team, and that the First Claimant might acquire an injury which she did not already have;

(ii) nevertheless, the Respondent did not accept a risk that a the Claimants had made a misrepresentation about a matter which was (to the Claimants' knowledge or deemed knowledge) of critical importance to the Respondent in deciding whether or not to enter into the Contract; and

(iii) paragraph 27 of Book 1 of the FIBA Regulations, to which the Claimants expressly referred, emphasises the importance of parties honouring their

contractual obligations. However, it is a necessary corollary of that emphasis on adhering to agreements, and also of the risk taken by the Respondent and the security granted to the Claimants in the No-Cut Clause, that the Respondent's decision to enter into the Contract should have been based on accurate and not misleading information about the Claimant and in particular about her ability to participate in games in the manner that the Respondent required and expected.

58. Accordingly, the Arbitrator finds that the Respondent was entitled to terminate the Contract when it realised that the Respondent was not in excellent physical condition and able to play full games without problems. Having so terminated the Contract, the Arbitrator finds that the Respondent had no further financial obligations to either of the Claimants under the Contract.

7. Costs

59. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the Parties separately. Furthermore, Article 17.3 of the BAT Rules provides that, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

60. On 12 January 2015, 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 at EUR 11,901.32.

61. The Arbitrator believes that these proceedings have taken longer and been more complicated than was necessary, and that this was in part because of the manner in which the Respondent chose to respond to and to conduct these proceedings. In particular, rather than submit an Answer in good time, the Respondent sought extensions, allowed its time to run out, and then submitted the substantial, unsolicited (and unsuccessful) Motion to Dismiss. There was nothing in the Motion to Dismiss which could not have been included in an Answer. The legal arguments in the Motion to Dismiss were simple, and so too were the factual and legal matters eventually submitted in the Answer. In the circumstances, the Arbitrator finds that the costs of the arbitration which were associated with the Motion to Dismiss were unnecessary, and the fault of the Respondent.

62. The Arbitrator notes, however, that the Claimants have failed in their claim. Thus, the Arbitrator decides that, in application of Article 17.3 of the BAT Rules and in light of the circumstances of the case, the Claimants shall bear a substantial proportion of the costs of the arbitration. Nevertheless, in light of the findings at paragraph 61 above, the Arbitrator decides that the Respondent shall pay EUR 4,000.00 to the Claimants as reimbursement of the arbitration costs advanced by them which were attributable to the Motion to Dismiss.

63. Neither of the Parties submitted a detailed account of their costs: each simply stated the amount of their legal fees and expenses. Moreover, neither party complied with the Arbitrator's express request that their accounts of costs identify the costs which related to the preparation of each individual item submitted in the proceedings. The Arbitrator notes the Respondent's comments on the Claimants' account of their legal costs and expenses; in light of the Arbitrator's decision on the merits of this case, there is no

purpose in further considering the points that the Respondent has raised. Moreover, in light of the Parties' failure to comply with the Arbitrator's requirements in relation to their accounts of costs, the Arbitrator is not able to make any findings as to the reasonableness or otherwise of either Party's legal costs. Accordingly, in this case each party shall bear its own legal fees and expenses.

8. AWARD

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

1. **Ramat Hasharon B.C. is ordered to pay to Ms. Brittany Denson and Mr. Zeev Goldansky EUR 4,000.00 as a contribution towards the costs of this arbitration.**

2. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 3 February 2015

Raj Parker
(Arbitrator)