FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0002/07 FAT)

rendered on 21 January 2008 by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. **Khalid El-Amin**, Ankara, Turkey

- Claimant 1 -

and

Beobasket Ltd, Gibraltar, Suite 4, 4 Giros passage, Gibraltar,
Representative office Serbia, Belgrade, Strahinjica bana 18

- Claimant 2 -

and

Excel Sports Management, 1156 Avenue of the Americas, Suite 400,
New York, N.Y., 10036 (USA)

all represented by Mr. Sam Goldfeder, Los Angeles, California

- Claimant 3 -

or jointly "the Claimants"

vs.

Basketball Club "**AZOVMASH**" **Limited**, 87535 Donetsk Oblast, 1, Mashinobudevelnikiv square, Mariupol, Ukraine,
represented by Noah Rubins and Gorsha Sur, Freshfields, Bruckhaus Deringer, Paris,

- Respondent -

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1. The Parties

1.1. The Claimants

Mr. Khalid El-Amin (hereinafter the “Player” or “Claimant 1”) is a professional basketball player and American citizen, currently playing for the basketball team Turk Telekom in Ankara, Turkey.

Beobasket Ltd (hereinafter ”Beobasket” or “Claimant 2”) is a basketball agency specialized in consulting services, founded by basketball agent Mr. Miodrag Raznatovic.

Excel Sports Management (hereinafter “Excel” or “Claimant 3”) is a sports agency based in the USA.

1.2. The Respondent

Basketball Club “AZOVMASH” Limited (hereinafter "BC Azovmash” or "Respondent") is a Ukrainian basketball club.

2. The Arbitrator

On 16 October 2007, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Mr. Quentin Byrne-Sutton, attorney-at-law in Geneva, Switzerland, as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

3. Facts and Proceedings

3.1. Background Facts

During an All-Star game in Cyprus, the Player met Mr. Boris Maletskyy, then Vice-President of Novator Sports Club ("SC Novator"), a Ukrainian entity operating the Basketball Club Azovmash (hereinafter the "Club") in Mariupol.

Mr. Maletskyy recognized the Player's potential and talent. This culminated in a contract being signed for the season 2005-2006 between the Player and SC Novator (hereinafter "Contract n°1"), whereby the Player was engaged to play for the Club.

In Contract n°1 SC Novator was defined as the "*Club*" and Mr Maletskyy signed the contract as "*Vice president of the Club*". Excel and Beobasket represented the Player, the latter being represented by Mr. Raznatovic.

After a successful first year with the Club, corresponding to the season 2005-2006, the Player was offered a contract for the next season with a higher salary, making him the best-paid player in the history of the Ukrainian basketball league.

Meanwhile the operations of the Club had been taken over by an entity named Sports Club Azovmash (hereinafter "SC Azovmash"), the legal successor of SC Novator.

Consequently, the contract for the Player's second year with the Club, corresponding to the season 2006-2007, was signed between him and SC Azovmash (hereinafter "Contract n°2). In Contract n°2, the Player was represented by Beobasket in the person of Mr. Raznatovic, and Mr. Maletskyy signed it on behalf of the Club as the representative of SC Azovmash.

At the end of 2006, the Club's operations were transferred to a newly-formed entity named "Basket Club Azovmash Limited" ("BC Azovmash"), the Respondent in this arbitration.

During the 2006-2007 season there were allegedly some disciplinary issues with the Player. However, the Club achieved good results and wished to explore the renewal of the Player's contract for a third season. Consequently, negotiations began in the spring of 2007. Mr. Raznatovic represented the Player. For language reasons, a member of the Club's staff, Mr. Andrei Savin, who has a role of liaison between the Club and foreign agents, began the negotiations for the Club.

Claimants contend that during the negotiations it was made clear that one of the conditions for the Player to accept the renewal of his contract for a third season was an increase in base annual salary to US$ 1.3 million, to which bonuses would be added. Respondent contests this and alleges that although the sum of US$ 1.3 million was evoked between Mr. Raznatovic and Mr. Savin, when the latter communicated the figure to the management of the Club it had not been clarified whether this was to be understood as a base salary or as an amount including bonuses.

In any event, at the beginning of June 2007, after the team's last game, Mr. Raznatovic sent Mr. Savin an e-mail attaching a draft contract for the season 2007-2008 (hereinafter "Contract n°3"). Contract n° 3 followed the same general format as Contract n°2 and contained a clause 2.1 providing for a base salary of US$ 1.3 million, followed by a clause 2.2 stipulating additional bonuses.

Respondent alleges that Mr. Savin received Contract n°3 on June 3rd, just before the team began gathering for a city parade in honor of the team winning the championship title. Respondent contends that in the circumstances Mr. Savin quickly printed out the

draft and immediately presented it to Mr. Maletskyy for signature with some brief explanations regarding the salary. Mr. Maletskyy declares that on such basis he assumed that the outcome of the negotiation had been properly coordinated with the Club's management. He therefore signed the contract on the spot and immediately faxed it back to Mr. Raznatovic, i.e. on June 3rd, which the latter signed the same day.

At the same time, Claimants 2 and 3 agreed with Respondent on an "Agents Fee Contract" dated 3 June 2007 (hereinafter the "Agency Contract"), which was exchanged and signed together with Contract n°3.

Upon signing Contract n°3 and the Agency Contract, Mr. Raznatovic forwarded Contract n° 3 to the Player for signature and left on holiday. The Player was in the midst of the team celebrations and then left Ukraine to travel back to the United States with several stops on the way. Consequently, he only signed Contract n° 3 on the 8th of June upon arriving in the United States.

In the meantime, Mr. Maletskyy had sent the Director of BC Azovmash, Mr. Aleksandr Logvinenko, a copy of Contract n° 3. Upon seeing the contract, Mr. Logvinenko asked Mr. Maletskyy to contact Mr. Raznatovic, via Mr. Savin, to tell the agent that the contract had been signed in error and that BC Azovmash was only prepared to pay a base salary of US$ 1 million and performance bonuses of US$ 300'000 but not a base salary of US$ 1.3 million.

Although it is undisputed that some telephone conversations took place, the parties disagree as to the exact date between 7 and 10 June 2007 when Mr. Savin was able to first reach Mr. Raznatovic by telephone to inform him of the mistake BC Azovmash was invoking with regard the amount of base salary.

On 8 June, on behalf of BC Azovmash, Mr. Savin sent an email to Mr. Raznatovic to inform him in writing. He stated therein: "*I tried to reach you by phone. There is a problem with Khalid's agreement. Our president made a big fuss over Khalid's agreement signed by Boris. He said we would agree for 1.3million USD totally including bonuses. So, we offer Khalid a contract for 1 million guaranteed salary (100'000 after his arrival to Mariupol + 10 payments of 90'000 each) and 300'000 in bonuses. Totally it is 1.3 million. We understand that the agreement was for 1.3million for salary. This is a misunderstanding and Boris is very sorry for this …*". The foregoing position was confirmed in a fax dated 11 June 2007 signed by Mr. Maletzkyy, in which it was specified that Contract n° 3 "… *should be considered rejected*" and that a new offer for a base salary of US$ 1 million should be sent by the Player.

Mr. Raznatovic indicates that he was on holiday until 10 June and declares that near the end of his holiday he received a phone call from the translator (Mr. Savin) of the Club indicating the Club's change of position regarding the Player's salary. Mr. Raznatovic adds that he first refused to take this information seriously, until he received the written confirmation.

In view of this situation, the Player chose to contest the Club's position and decided to seek the possibility of transferring to another basketball club.

Via his agents, the Player managed to rapidly negotiate a pre-contract with a club in Ankara, Turkey, named Basketball Club Turk Telecom (hereinafter "Turk Telecom"), which was dated 16 June 2007. This pre-contract matured into a final contract between the Player and Turk Telecom, which is dated 20 August 2007 (the "Turk Telecom Contract").

According to the Claimants' allegations and the signed copy of the Turk Telecom

Contract filed in this arbitration, the Player is engaged with Turk Telecom for the season 2007-2008 with a base salary of US$ 1 million plus bonuses.

Considering himself prejudiced for having had to resolve moving to a different club with a lower salary due to BC Azovmash's rejection of Contract n°3, the Player decided to file a claim for compensation against the Club, together with his agents who are claiming the resulting loss of their agency fee.

Consequently, on the basis of the FAT arbitration clause contained in Contract n°3, Claimants filed a request for arbitration on 10 October 2007 against the Club, claiming a total amount of compensation of US$ 1.3 million for the Player and an amount of US$ 130'000 for his agents.

In its answer and counterclaim dated 22 November 2007, Respondent invoked the right to be relieved on several grounds from its obligations under Contract n°3 and alternatively contested Claimants' calculation of damages. Respondent also counterclaimed US$ 125'000 in damages allegedly caused by actions of Mr. Raznatovic resulting in the collapse of a negotiation between the Club and another player named Mr. Kenan Bajramovic.

In their reply of 26 November 2007 to Respondent's answer and counterclaim, Claimants opposed the counterclaim and maintained their initial claim, while claiming in the alternative that Respondent is liable for the difference between the Player's base salary agreed in Contract n°3 (US$ 1.3 million) and his base salary under the Turk Telecom Contract (US$ 1 million).

3.2. The Proceedings before the FAT

On 10 October 2007, Claimants filed a Request for Arbitration in accordance with the FAT Rules, and subsequently duly paid the non-reimbursable fee of EUR 3,000.00.

On 19 October 2007, FAT informed the parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter.

On 22 November 2007, Respondent filed its Answer and Counterclaim

On 26 November 2007, Claimants filed a reply to Respondent's Answer and Counterclaim.

By Procedural Order No 1 dated 5 December 2007, the Arbitrator decided there would be no hearing given the absence of any request therefor, and that there would be no further exchange of submissions. Furthermore each part was granted a deadline until 14 December 2007 to pay an advance on costs fixed at US$ 5'000 for Claimants and US$ 5'000 for Respondent.

On 6 December 2007, Respondent filed a non-solicited submission alleging that the copy of the Turk Telecom Contract filed by Claimants contained some forged sections.

On 7 December 2007, the Arbitrator granted Claimants a deadline until 14 December 2007 to reply to the allegations of forgery and confirmed that Procedural Order N° 1 remained applicable for the rest.

On 12 December 2007, Claimants submitted their reply to the allegations of forgery.

On 13 and 14 December 2007, respectively, Claimants and Respondent each duly paid

their share of the advance on costs.

On 17 December 2007, the Arbitrator requested the parties to submit their costs and declared the proceedings closed.

4. The Positions of the Parties

4.1. The Claimants' Position

The Claimants submit in substance that BC Azovmash is obliged to honor Contract n° 3 due to it being validly signed and that the agents are in no way responsible for Kenan Bajramovic deciding not to sign up with the Club.

On such basis, Claimants request the Tribunal to:

> *"a) AWARD to the Claimant, Khalid El Amin amount of 1.300.000 USD, as well as to Excel SM amount of 65.000 USD and Beobasket amount of 65.000 USD*
>
> *or alternatively to:*
>
> *a) AWARD to the Claimant, Khalid El Amin amount of 300.000 USD, as well as to Excel SM amount of 15.000 USD and Beobasket amount of 15.000 USD*
>
> *b) REJECT the claim of Respondent of USD 125.000, plus interest at the applicable Swiss statutory rate."*

4.2. The Respondent's Position

In substance, the Respondent submits that:

- While deciding the case *ex aequo et bono*, the Arbitrator must have regard

for relevant general principles of law and for the law of Ukraine.

- The Arbitrator should refuse jurisdiction because neither the Respondent nor Claimants 2 and 3 are proper parties to the arbitration.

- Contract n°3 never became binding between the parties because it was revoked and/or it is invalid due to a fundamental mistake and/or no contract exists due to the parties' different understanding of a material term and/or the contract is not binding under Ukrainian law.

- In all events, any award of damages would be unjust in the circumstances, notably because the Claimants have acted unfairly and because they have been compensated via the Turk Telecom Contract.

- Furthermore, Claimants are liable to Respondent for damages due to interference with the prospective contractual relationship with another player named Kenan Bajramovic.

On such basis, Respondent requests the Tribunal to:

"*(i) DECLARE that the Respondent did not consent to arbitration and reject the Claimants' claims for lack of jurisdiction;*

OR, alternatively to (i):

(i) REJECT the claims of Beobasket and Excel for lack of standing;

(ii) DECLARE that the Agreement was void ab initio *or properly avoided;*

(iii) REJECT the claims of the Claimants in their entirety;

(iv) AWARD to the Respondent US$ 125,000, plus interest at the applicable Swiss statutory rate; and

(v) GRANT any further or other relief that the Arbitrator deems appropriate."

5. Jurisdiction of the Arbitrator

Claimants are basing the jurisdiction of the Arbitrator appointed by FAT on the following arbitral clause contained in Contract n°3:

"5. Dispute

5.1. The parties give priority to non-court settlement of the disputes on the basis of negotiations.

5.2. Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President.

The seat of the arbitration shall be Geneva, Switzerland.

The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile.

The language of the arbitration shall be English.

Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sports (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.

The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."

In objecting to the jurisdiction of FAT, Respondent is relying on several grounds, which will now be examined in turn.

As a preliminary matter, the Arbitrator notes that Respondent is contending that SC Azovmash rather than BC Azovmash (Respondent) was the intended signatory of Contract n° 3. The Arbitrator finds that such is not the case because, on the one hand, Claimants obviously had the intention to sign Contract n°3 with whatever entity was in fact operating the

Club at the time of signature (which was BC Azovmash), and, on the other hand, Respondent (and no other entity) was intending to enter into a new contract with the Player, albeit allegedly with a different content as to the base salary, and had therefore begun negotiating Contract n°3. As a result, BC Azovmash must be deemed the intended signatory of Contract n°3 and the Arbitrator need not address the question of whether the arbitration agreement can be extended to a non signatory.

Respondent contends that in any event it is not bound by the arbitral clause because upon signing Contract n°3 on behalf of BC Azovmash, Mr. Maletskyy had no authority to bind the Club to the contract.

The Arbitrator finds that Respondent cannot rely on this objection since whether or not Mr. Maletskyy had been given the authority internally to sign Contract n° 3 on behalf of BC Azovmash, the Club and the representatives of BC Azovmash acted in a fashion which would lead any reasonable person to believe in good faith that Mr. Maletskyy had such authority, notably because (i) he had validly signed Contracts n°1 and n°2 with the Player on behalf of the Club, (ii) there is no evidence that the Player was ever informed that the team's operations were transferred to a newly-formed entity which Mr. Maletskyy could not engage, and (iii) the letter of 11 June 2007 whereby BC Azovmash purported to reject Contract n° 3 by invoking a mistake was signed by Mr. Maletskyy.

The above conclusion derives from the general principle of good faith whichever the applicable law.

Consequently, in the circumstances Mr. Maletskyy must be deemed to have engaged BC Azovmash when signing Contract n°3.

Respondent argues furthermore that Claimants 2 and 3 cannot invoke the arbitration clause because they are not named in Contract n°3 but only in the Agency Contract.

The Arbitrator finds that the two contracts are intricately linked and that the Agency Contract could not be understood on its own without reference to Contract n°3. Indeed, the Agency Contract stipulates that the Player shall collect the agents' fees on their behalf as well as exercise their remedies in case of non-payment, and in that regard there is a direct reference in the Agency Contract to Contract n°3. In addition, both contracts were exchanged and signed by BC Azovmash with the agents on the same date, while the summary nature of the Agency Contract gives the impression it is a form of annex to Contract n°3.

For the foregoing reasons, the Arbitrator considers that the parties to the Agency Contract must have understood the arbitration clause in Contract n°3 to have been included by reference in the Agency Contract as the basis for any dispute resolution relating to the agents' fees.

Consequently, the Arbitrator finds that the arbitration clause in Contract n° 3 is binding on Respondent and on Claimants with regard to the claims being made in this arbitration.

In addition, the Arbitrator finds that the grounds under which Respondent is challenging the validity of Contract n°3 cannot affect the validity of the arbitration agreement because the alleged absence of mutual consent and mistake relate only to the Player's salary and because, under the applicable Swiss arbitration law, the validity of the arbitration agreement cannot be contested on the ground that the main contract may not be valid (see art. 178(3) PILA).

Therefore, the Arbitrator has jurisdiction to adjudicate the claims.

On the other hand, the Arbitrator finds he has no jurisdiction over the counterclaim because the cause of action being invoked by Respondent does not come within the scope of Contract n°3 or therefore within the scope of the arbitration agreement contained therein.

6. The Merits of the Claim: Discussion

6.1. Applicable Law

Article 15.1 of the FAT Rules provides that: "*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*".

According to the preamble of Contract n°3, the parties acknowledge that they are signing a contract "*respecting principles of labour law of Ukraine*", whereas 5.2 in fine of Contract n°3 provides that: "*The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono*".

The Arbitrator considers that the apparent contradiction between the two foregoing choice-of-law clauses must be resolved by placing each choice within its context. The choice of Ukrainian labour law must be deemed to concern the contractual relationship between the parties and its implementation outside any contentions in front of the FAT, whereas any unresolved disputes brought to the FAT for resolution must be deemed governed by the reference to a decision being made *ex aequo et bono*.

Consequently, the Arbitrator shall adjudicate the claims *ex aequo et bono*.

6.2. Findings

The Arbitrator finds it unclear from the record whether the Player actually signed Contract n°3 before or after Respondent communicated its intent to retract the undertaking to pay him a base salary of US$ 1.3 million as stipulated in 2.1 of the contract.

That said, while it appears undeniable that the amount of base salary was an essential element for both the Player and the Club, the record tends to demonstrate that on Respondent's side a true misunderstanding developed during the negotiation, due to the number of intermediaries involved in the negotiation of the contract. With Mr. Savin being involved for language reasons and reporting to the Club's management, on the one hand, and Mr. Maletskyy signing the contract without consulting BC Azovmash's Director Mr. Logvinenko, on the other hand, there was room for the latter's intent to be overlooked.

The chronology of events and the content of Mr Savin's communications with Mr. Raznatovic make it more probable than not that Mr. Maletskyy did make a mistake by falsely assuming that Mr. Logvinenko was agreeable to paying a base salary of US$ 1.3 million, when in reality the latter was unwilling for the Player to be engaged for a net salary above US$ 1 million. The very short period between the signing of Contract n° 3 by Mr. Maletskyy and the subsequent retraction by Mr. Savin (telephone and email) and Mr. Maletsky (fax) are significant in that respect as well as the content of the communications, since they clearly state that Mr. Logvinenko was not in agreement.

For those reasons the Arbitrator finds that Respondent did mistakenly and without bad faith undertake to pay a salary in an amount which was significantly higher than the amount it was in reality willing to pay, and that the Respondent informed the Player of this without delay and formally retracted itself within a short time frame when it realized the mistake had been made.

Furthermore, when Respondent retracted itself there is no indication that the Player made serious attempts to insist on the contract and salary in question, since, instead, the Player negotiated and signed a pre-contract with Turk Telecom within a week from learning of BC Azovmash's position.

In such circumstances, the Arbitrator finds it is fair and reasonable to deem Respondent's retraction valid.

Whether the Player should be entitled to an indemnification needs to be determined in light of the circumstances following the retraction by Respondent. Are relevant in that respect the fact that the Player nearly immediately signed a pre-contract with another club for a base salary of US$ 1 million, which soon matured into a final contract for the same amount, and the fact that there is no evidence of the Player reserving his rights or of him invoking that the move to Turk Telecom was overall disadvantageous for him.

On the contrary, in this arbitration the Player submits that the move to Turk Telecom was welcome for him for several reasons. In that respect, Claimant submitted that it "… *is of the opinion that logical question is why the offer of other Turkish club in amount of 1'000'000 USD was accepted by Khalid El Amin and not accepted when such a contract was offered by respondent. Reasons for that are clear and pragmatic. Namely, Khalid El Amin is a father of 5 children and considering the fact that the living conditions in Mariupolu did not enable his children to live with him, they were separated during last 2 seasons. As he stated, separation from family is the biggest sacrifice he had to bear and therefore he was not ready to play for the same amount of money in the club, where he could live with 6 members of his family and in the club where he would be separated from his children again. Out of respect towards respondent as well as investment they made into basketball sport, claimant will not make further depiction of life in Mariupolu, including almost unbelievable air pollution rate in the town".*

Furthermore, the Player's claim for compensation was only filed four months after Respondent retracted itself and two months after the Player had signed the Turk Telecom Contract.

In such circumstances, the Arbitrator finds that the Player would be unjustly enriched if he were to be awarded the US$ 1.3 million being claimed as the principal amount, and

that it is fair to consider that the shortfall in base salary being claimed in the alternative has been compensated by a number of advantages gained from moving to Ankara which were subjectively very important for him, and which according to his own admission led him to readily accept the offer from Turk Telecom rather than insist on his contract with BC Azovmash and be obliged to remain in Mariupolu without his family.

For the above reasons, the Arbitrator considers it would not be just or fair in the circumstances to award any indemnification to the Player.

Since under article 8 of Contract n° 3 the agents' fees were dependant on the Player joining the Club and their fees "*… should be considered as part of the player's salary*", the agents' claims must be rejected as a consequence of the Player joining a different club and not being entitled to any payment or remedy under Contract n°3. Moreover, the agents would also be unjustly enriched if their main claim were admitted, since they are entitled to a commission under the terms of the Turk Telecom Contract.

7. Costs

Article 19.2 of the FAT Rules provides that the final amount of the costs of the arbitration shall be determined by the FAT President and may either be included in the award or communicated to the parties separately. Furthermore, article 19.3 of the FAT Rules provides that the award shall determine which party shall bear the costs and in which proportion.

On 21 December 2007, the President of the FAT rendered the following decision on costs:

> *"Considering that under Swiss law the arbitrators have the obligation to decide on the amount and the allocation of the arbitration costs as well as on the contribution towards the parties' legal fees (BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 1477, p. 521).*

Considering that pursuant to Article 19.2(1) of the FAT Rules "the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator".

Considering that Article 19.2(2) of the FAT Rules adds that 'the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to time'.

Considering all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and of the procedural questions raised, the President of the FAT determines the arbitration costs as follows:

• *Arbitrator's fees (30.6 hours at an hourly rate of EUR 300)*	*EUR*	*9,180*
• *Arbitrator's costs*	*EUR*	-----
• *Administrative and other costs of FAT*		-----
• *Fees of the President of the FAT*	*EUR*	*820*
• *Costs of the President of the FAT*		-----
TOTAL		***EUR 10,000"***

Considering that in the present case Claimants' prayers on the merits have been dismissed, while Respondent's prayers with respect to lack of jurisdiction and its counterclaim have also been dismissed, but considering the dispute arose due to a mistake being made by Respondent and taking into account the fact that the Claimants paid a non-reimbursable handling fee of EUR 3,000, the Arbitrator deems it fair that each party bear its own legal fees and expenses but that the costs of arbitration be borne by Respondent alone.

Hence, the Arbitrator decides that Respondent shall pay to Claimants the amount of arbitration costs that is not covered by Respondent's advance on costs, i.e. an amount of EUR 5,000.

On 19 December 2007, the Claimants informed the Arbitrator that the non-reimbursable handling fee of EUR 3,000 and the Claimants' share of the advance on the arbitration cost of was paid by Claimant 1.

Hence, the Arbitrator holds that respondent shall pay EUR 5,000 to Claimant 1 as a reimbursement of the advance of arbitration costs.

8. AWARD

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

1. **The Arbitrator accepts jurisdiction over Mr. Khalid El-Amin's, Beobasket Ltd's and Excel Sports Management's claims.**

2. **Mr. Khalid El-Amin's, Beobasket Ltd's and Excel Sports Management's claims are dismissed.**

3. **The Arbitrator declines jurisdiction over BC Azovmash's counterclaim.**

4. **BC Azovmash shall pay EUR 5,000 to Excel Sports Management as a reimbursement of the advance of arbitration costs.**

5. **Any and all other requests for relief are dismissed.**

Geneva, place of the arbitration, 21 January 2008

Quentin Byrne-Sutton

(Arbitrator)

We Are Basketball

FIBA Arbitral Tribunal (FAT)

Notice about Appeals Procedure

cf. Article 17 of the FAT Rules

which reads as follows:

"**17. Appeal**

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."