BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0968/17)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Roy Devyn Marble

Wasserman Media Group, LLC.

- Claimants -

represented by Mr. Howard L. Jacobs, attorney at law,
2815 Townsgate Rd., Suite 200 Westlake Village, CA 91361, USA

vs.

Aris BC (ARIS BSA 2003)
Gregory Lambrakis 2
Thessaloniki 54636, Greece

- Respondent -

represented by Mr. Spyridon Christoforidis, attorney at law,
Polytechneiou 12, Thessaloniki 54625, Greece

1. The Parties

1.1 The Claimants

1. The First Claimant (hereinafter "Mr Marble") is a professional basketball player.

2. The Second Claimant (hereinafter "Wasserman") is a sports marketing and talent management company, which at the material times acted as Mr Marble's agent.

1.2 The Respondent

3. Aris BC (ARIS BSA 2003) (hereinafter the "Respondent") is a professional basketball club in Greece.

2. The Arbitrator

4. On 20 March 2017, Prof. Richard H. McLaren, O.C., the President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), appointed Mr. Raj Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

5. Neither party has raised any objection to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

6. On 10 August 2016, the Claimants and the Respondent signed and entered into a legally binding contract (hereinafter the "Playing Contract"). The Playing Contract included the following express terms:

Article II – Mr Marble was entitled to "*Guaranteed Compensation*" of USD 225,000 net for the 2016/17 playing season, to be paid in 10 monthly instalments of USD 22,500, commencing on 1 September 2016 and thereafter on the first day of each month (until the final payment on 1 June 2017). The Playing Contract provided that "*All salary to the Player shall be fully guaranteed, vested, and owed in full upon execution of this Agreement by the Player and Club. In the event any payments are more than twenty five (25) days late, Club acknowledges and agrees that it shall incur a late fee of USD $50.00 per day as a non-exclusive remedy to Player.*"

Article III(B) – the Respondent agreed to pay for "*one (1) business class round-trip airline ticket from Player's residence in the United States of America to Thessaloniki and three (3) round-trip economy class airline tickets from the United States of America to Club's location during the Term, including for Player's family and friends*."

Article IV – the Respondent agreed to pay Wasserman the sum of USD 22,500 as the "*guaranteed agent fee for the 2016/17 season net of taxes*" (hereinafter the "Agent Fee").

Article V – the parties acknowledged that "*Player and Club may also be required to enter into a uniform player contract as stipulated by the body governing the Federation where Club shall participate*", and stipulated that "*In the event that there is any type of conflict between this Agreement and such uniform contracts, the provisions of this document will control and be honored*."

Article VI – the "*Contract Guarantee*" provided as follows: "*Club agrees that this Agreement is an unconditionally guaranteed contractual Agreement and that Player's salary, bonuses and the Agent Fee are fully guaranteed, due and payable, including but not limited to in the event of Player's injury, illness, and/or lack of skill…"*

Article IX – headed "*Termination for Non-Payment*", this Article provided as follows:

"*Club agrees that the Player may immediately terminate this Agreement in the event that: (i) any payment to Player and/or Agent required by the Agreement is past due more than twenty five (25) days; and/or (ii) Club breaches any non-payment term of this Agreement and fails to cure such breach within fifteen (15) days after notice of such breach.*

In the case of such termination of this Agreement by Player, Club will immediately grant Player his unconditional release and free agency, and Club shall take all necessary steps to immediately issue a Letter of Clearance. Upon forty-eight (48) hours after notice has been given, all monies that otherwise would have been due to Player and Agent had this Agreement been fully performed as if this Agreement were not terminated shall become immediately due and payable. Player shall be under no obligation to mitigate his damages and Club shall receive no offset…"

7. In summary, this dispute concerns:

   (a) Mr Marble's claim for damages for breach of the Playing Contract; and

   (b) Wasserman's claim for payment of the Agent Fee.

8. There is a second signed written contract between Mr Marble and the Respondent, dated 23 September 2016 and headed 'Athletic Services Contract' (hereinafter the "Athletic Services Contract"). The form and content of the Athletic Services Contract was different, in various material respects, from the Playing Contract (including in respect of remuneration provisions). The interrelationship between the two contracts is considered below.

9. From 8 October to 20 December 2016, Mr Marble regularly participated in Greek

League and Basketball Champions League games for the Respondent.

10. By a letter dated 10 October 2016, Wasserman notified the Respondent that it had failed to pay Mr Marble's September and October 2016 salary payments, in the total sum of USD 45,000, and demanded payment of his outstanding salary.

11. Following this letter, the Respondent belatedly paid Mr Marble's September and October 2016 salary payments.

12. By an email sent on 30 November 2016, Wasserman notified the Respondent that:

    (a) Mr Marble's November salary payment of USD 22,500 was now more than 25 days overdue;

    (b) Mr Marble had the right to terminate the Playing Contract;

    (c) The 1 November 2016 salary payment, together with a late payment fee of USD 300, must be paid by 9am on 2 December 2016; and

    (d) A failure to make this payment by the time specified may result in Mr Marble terminating the Playing Contract with immediate effect and filing a claim with the BAT.

13. The Respondent did not make the requested payments and on 21 December 2016, Wasserman notified the Respondent that the Playing Contract was being terminated by Mr Marble for non-payment, pursuant to Article IX thereof (hereinafter referred to as the "Termination Letter"). In the Termination Letter it was stated that the Respondent had failed to pay:

    (a) Mr Marble's November 2016 salary payment of USD 22,500, which was 50

days overdue as at the date of the Termination Letter;

(b) Mr Marble's December 2016 salary payment of USD 22,500, which was 20 days overdue as at the date of the Termination Letter;

(c) Late payment fees of USD 1,200; and

(d) The Agent Fee of USD 22,500.

14. In a document dated 23 December 2016 (i.e. two days after the date of the Termination Letter), entitled 'Extrajudicial Summons to make a Statement of Defence', the Respondent alleged that Mr Marble had "*committed a large number of disciplinary offences*", which was said to constitute "*breaches of the terms of the agreement between [the parties], the provisions of the club's internal regulations and is contrary to good faith and sporting morals, and is unlawful and culpable*…". Mr Marble was requested to attend the Respondent's offices at 1pm the following day.

15. On 24 December 2016 (i.e. three days after the date of the Termination Letter), the Respondent convened, in Mr Marble's absence, a hearing of its 'Disciplinary Committee'. The minutes of this meeting record, *inter alia*, "*it was unanimously decided that in order to preserve the team's normality and protect its legitimate interests, the agreement between Aris BC and [Mr Marble] has to be terminated for an important reason…*"

16. The Respondent states that this purported termination was notified to Mr Marble on 28 December 2016.

3.2 The Proceedings before the BAT

17. On 15 February 2017[1] the Claimants filed their Request for Arbitration (hereinafter the "RFA") in accordance with the BAT Rules.

18. The non-reimbursable handling fee of EUR 3,000 was received by the BAT from the Claimants on 15 February 2017.

19. On 30 March 2017, the BAT received the Claimants' share of the Advance on Costs, in the combined sum of EUR 5,000 (EUR 4,000 in respect of Mr Marble EUR 1,000 in respect of Wasserman).

20. The Respondent failed to pay its share of the Advance on Costs by 10 April 2017, which was the date stipulated in the BAT's letter of 22 March 2017. The BAT did, however, receive the Respondent's share of the Advance of Costs, in the sum of EUR 5,000, on 11 April 2017.

21. On 19 April 2017, the Respondent:

    (a) attempted to serve the Respondent's Answer and accompanying exhibits via email; and

    (b) requested an extension of 10 working days to submit an additional Respondent's Answer and to provide translated copies of original documents.

22. Owing to the size of the aforementioned file, the Claimant's email of 19 April 2017 was met with a 'Delivery Status Notification (Failure)' message. On 20 April 2017 the BAT acknowledged receipt of the Respondent's Answer and merged the various

[1] Incorrectly dated 15 February 2016 on the RFA.

documents provided by the Respondent into one pdf-file.

23. On 25 April 2017 the Arbitrator granted the Respondent's request identified in paragraph 21 (b) above, ordering that the relevant documents be submitted by no later than 5 May 2017. The supplementary documents were submitted by the Respondent on 5 May 2017 and acknowledged by the BAT on 8 May 2017.

24. On 7 June 2017 the Arbitrator issued a procedural order, inviting the Claimant to file, by no later than Wednesday 21 June 2017, supplementary written submissions addressing the points raised in the Respondent's Answer and associated documentation. In particular, the Arbitrator sought clarification of "*the Claimants' position with regard to the authenticity, validity, terms and legal effect of the 'Athletic Services Contract' and addendum, both of which are dated 23 September 2016*."

25. On 13 June 2017 the Claimants' representative requested a 15 day extension for the filing of these supplementary written submissions, until 6 July 2017. This request was granted by the Arbitrator on 16 June 2017. The Claimants' 'Reply to Answer Submitted by Respondent Aris BC' (hereinafter the "Claimants' Reply") is dated 6 July 2017 but, according to the email correspondence, was received by the BAT via email at 01:37 on 7 July 2017. Taking into account the fact that the Claimants' representative: (a) is based in California; and (b) sent the Claimants' Reply on 6 July 2017, *US time*, the Arbitrator is prepared to exercise his discretion to admit the document. In the Arbitrator's judgment, it is in the interests of justice to consider the observations and submissions made in the Claimants' Reply.

26. In the absence of a request by the parties, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the Award on the basis of the written submissions and evidence submitted by the parties.

27. On 20 July 2017 the parties were notified by the BAT that the exchange of documents

had been completed, and invited to provide their respective costs submissions by 25 July 2017. On 20 July 2017 the Claimants' representative requested an extension until 27 July 2017 to provide their costs submissions. This request was granted by the Arbitrator on 24 July 2017, and the Claimants' account of costs was duly submitted on 26 July 2017.

28. On 28 July 2017 (three days after the 25 July 2017 deadline for costs submissions) an email was sent on behalf of the Respondent, requesting a "*five days period in order to submit all relevant legal documentation regarding the legal costs and fees of the procedure*." On 1 August 2017 the parties were notified that the Arbitrator had rejected this request.

4. The Claimants' Position

29. The Claimants' case, as detailed in the RFA, may be summarised as follows:

(a) The Respondent was late in paying Mr Marble's September and October 2016 salary.

(b) The Respondent failed to pay Mr Marble's November and December 2016 salary.

(c) The Respondent failed to pay the Agent Fee.

(d) The Respondent failed to heed Wasserman's warning dated 30 November 2016 that failure to make prompt payment of Mr Marble's November 2016 salary may result in the termination of the Playing Contract.

(e) Mr Marble was lawfully entitled to terminate the Playing Contract, pursuant to Article IX thereof.

(f) Mr Marble exercised that right on 21 December 2016 by sending the Termination Letter.

(g) Only USD 45,000 of Mr Marble's "*guaranteed*" salary of USD 225,000 was paid by the Respondent and, in principle, Mr Marble is entitled to be paid "*all monies that otherwise would have been due to Player and Agent had this Agreement been fully performed as if this Agreement were not terminated…*" Mr Marble is, however, willing to limit his claim for unpaid salary to the sum of USD 115,000, giving credit for US USD 65,000 that he will receive (or has in part received) from his new club, Aquila Basket Trento, during the same time period covered by the Playing Contract.

(h) In addition, Mr Marble is entitled to other ancillary sums from the Respondent, as detailed below.

(i) Wasserman is entitled to payment of the Agent Fee.

30. The Claimants' request for relief (in Appendix 2 of the RFA) states that they are seeking the following sums:

Unpaid compensation, Roy Devyn Marble	*US $115,000.00*
Unpaid plane ticket cost, Roy Devyn Marble	*US $6,531.90*
Late payment penalties, Roy Devyn Marble	*US $4,050.00*
Unpaid agent fee, Wasserman Media Group	*US $22,500.00*
Costs [FIBA BAT filing fee, 3,000 Euros]	*US $3,252.60*

Attorney's fees	*US$ 10,625.00*
TOTAL *[and legal interest at 5% per annum]*	*US $161,959.50* *[plus arbitrator costs]*

31. The Claimants thereby "*request an award against Aris BC in the amount of US $161,959.50, plus arbitrator costs and legal interest at 5% per annum. In the alternative, Claimants request an award against Aris BC in an amount which the arbitrator deems to be owed under the Aris Player Agreement; plus an award of costs, legal fees, and interest in an amount which the arbitrator deems just and proper.*"

5. The Respondent's Position

32. The Respondent's case, as detailed in the Respondent's Answer and as understood by the Arbitrator[2], may be summarised as follows:

(a) The Athletic Services Contract overrides any contrary preceding private contract and any written or oral agreement, including the Playing Contract.

(b) Mr Marble failed to comply, in various respects, with applicable 'Internal Rules and Regulations'.

(c) By reason of Mr Marble's conduct, which was "*unjustified, unconventional and highly non-contractual*", the Respondent was entitled to dismiss him without any obligation to pay him compensation; Mr Marble *"should lose all the contractual rights against [the Respondent]";* and the Respondent "*has no*

[2] The Arbitrator has not found the Respondent's Answer and associated documentation easy to follow.

obligation to pay any money to him or his agents' company."

(d) Mr Marble bears "*sole responsibility*" for the cessation of the parties' contractual relationship.

(e) Mr Marble's culpability has been established by a Decision of the 'First Grade Financial Committee of Greek Basketball League'.

6. The Claimants' Reply

33. The Claimants' supplementary submissions, as detailed in the Claimants' Reply, may be summarised as follows:

(a) The Athletic Services Contract was a "*uniform player contract*", as envisaged by Article V of the Playing Contract, and is therefore 'trumped' by the provisions of the Playing Contract.

(b) Further or alternatively, the parties' conduct demonstrates that the Playing Contract remained the "*controlling*" contract.

(c) The 'Internal Rules and Regulations' cited by the Respondent do not give rise to a legitimate defence to the claims, because: (a) they were not signed by Mr Marble and were therefore not binding on him; (b) in any event, Mr Marble did not breach them; (c) non-compliance would not, in any event, permit termination of the Playing Contract; and (d) Mr Marble had already terminated the Playing Contract prior to the Respondent's attempts to take disciplinary action against him, which constituted a "*transparent attempt by the club to avoid the consequences of its violation of the controlling Player Agreement by its non-payment of guaranteed salary*…"

7. Jurisdiction

34. 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 the Swiss Act on Private International Law (PILA). This is expressly recognised by Article VII of the Playing Contract.

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

36. 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.[3]

37. Article VII of the Playing Contract provided as follows:

> "…*Any dispute arising from or related to the present contract shall be submitted to the BAT in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President*…"

38. The Playing 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 dispute arising from or related to the present contract*" is apt to cover the present dispute, which concerns alleged breaches by the Respondent of the Playing Contract.

39. Whilst the Respondent referred in its Answer to a Decision of the 'First Grade Financial Committee of Greek Basketball League', the circumstances in which this

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

Decision was allegedly rendered (including, for example, what information / evidence was provided to the decision-making body, or what notice, if any, was given to Mr Marble of those proceedings) is unclear; and, in any event, that Decision apparently deals with claims deriving from the Athletic Services Contract, not the Playing Contract, and as such does not debar the BAT from considering the Claimants' claims as articulated in the RFA.

40. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claim.

8. Discussion

8.1 Applicable Law – *ex aequo et bono*

41. 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".*

42. Under the heading "Law Applicable to the Merits", Article 15.1 of the BAT Rules provides 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."*

43. Article VII of the Playing Contract also provided that:

"…*The arbitrator shall decide the dispute ex aequo et bono*."

44. In light of the above, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono,* applying general considerations of justice and fairness without reference to any particular national or international law.

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

8.2 Findings

46. The Respondent does not deny that it failed to pay Mr Marble's salary for November and December 2016. The reasons it advances for this non-payment are as follows:

    (a) In respect of November 2016, it had "*informally been agreed, among all team athletes, a silent suspension of month payments because of the poor performance and the team's defeat at home by our big rival PAOK in Thessaloniki*"; and

    (b) In respect of December 2016, because the Respondent "*expected by FIBA the approval of the use of the drug Adderral XR 20 mg Consumption for _____*.."

47. In the Arbitrator's judgment, the Respondent did not have a justifiable basis to withhold Mr Marble's salary in respect of November or December 2016. With regard to the alleged informal agreement of a "*silent suspension of month payments*" [sic], the Respondent has failed to provide proper particulars of the alleged agreement with Mr Marble, or any credible evidence to substantiate the assertion that Mr Marble agreed to forego the prompt payment of his November 2016 salary. Mr Marble's conduct, via his agent, is also inconsistent with his having agreed to any suspension of his monthly salary. Furthermore, the Respondent did not respond to the 30

November 2016 email from Mr Ranne of Wasserman, demanding payment of the November salary, by stating that Mr Marble had agreed to a "*suspension*" of this payment. Had he so agreed, that would have been the logical and obvious response.

48. With regard to the issue of FIBA approval for Mr Marble's medication (for the purpose of Mr Marble's participation in Basketball Champions League matches), the Arbitrator finds that this was an administrative issue between the Respondent and FIBA and did not provide a legitimate justification for withholding Mr Marble's December 2016 salary. The Arbitrator considers it is clear from the contemporaneous documents that: (a) Mr Marble had been open and honest with the Respondent about his _____; (b) an approved Therapeutic Use Exemption had been validated by the Greek Anti-Doping Agency in November 2016; and (c) Mr Marble had cooperated with the necessary approval processes.

49. The Arbitrator notes that in an email sent by Mr Laskaris of the Respondent on the evening of 30 November 2016, it was stated that "*we want to terminate the contract of Dayvin Marmble* [sic]." This email contained no criticisms of Mr Marble's conduct or behaviour.

50. The Arbitrator finds that the remuneration (and associated termination) provisions in the Playing Contract remained operative and binding on the parties, notwithstanding the subsequent Athletic Services Contract. First of all, the Arbitrator accepts that the Athletic Services Contract was a contract of the type envisaged by Article V of the Playing Contract; and that the terms of the Playing Contract should accordingly prevail in the event of any conflict between them. The Arbitrator notes, in particular, that:

    (a) The Athletic Services Contract is drafted on the branded paper of the Hellenic Basketball League;

(b) The Respondent refers to the Athletic Services Contract as having been "*approved and confirmed by the Board of ESAKE (Hellenic Association of Basketball S.A. Companies)*"; and

(c) The hyperlink at the foot of each page of the Athletic Services Contract begins http://contracts.esake.gr/e/Basketcontract.

51. Secondly and in any event, the Arbitrator considers it is clear that the parties conducted themselves in accordance with the remuneration provisions in the Playing Contract – in particular:

(a) The Respondent paid (albeit late) Mr Marble's salary for September and October 2016 at the rate of USD 22,500 per month, which reflected the terms of the Playing Contract, but did not reflect the terms of the Athletic Services Contract;

(b) Mr Marble, via Wasserman, demanded payment of his November and December 2016 salary in the sums of USD 22,500 per month; and

(c) At the time of this correspondence, the Respondent did not dispute that Mr Marble had a contractual entitlement to be paid a monthly salary of USD 22,500.

52. In light of the foregoing, the Arbitrator considers that Mr Marble's right to terminate the Playing Contract, pursuant to Article IX thereof, was engaged as at 21 December 2016 when the Termination Letter was sent. In particular:

(a) Mr Marble's November 2016 salary payment was more than 25 days overdue; and

(b) The Respondent had been put on notice of its breach of the Playing Contract (in respect of the non-payment of the November 2016 salary) on 30 November 2016, and had failed to remedy that breach within 15 days (or at all).

53. The Arbitrator finds that the unjustified non-payment of Mr Marble's salary constituted a fundamental breach of contract and entitled him to summarily terminate the Playing Contract, which he duly did on 21 December 2016.

54. The Arbitrator finds that the events post-dating 21 December 2016 constituted a contrived attempt on the part of the Respondent to mount an *ex post facto* justification for Mr Marble's dismissal, in the hope of avoiding the legal and financial consequences of: (a) its unjustified failure to pay Mr Marble's salary; and (b) the Termination Letter.

55. Whilst the Arbitrator does not consider it necessary or proportionate to provide detailed reasons for rejecting the Respondent's allegations of "*unjustified, unconventional and highly non-contractual*" conduct on the part of Mr Marble, the Arbitrator does make the following observations:

(a) All of the allegations against Mr Marble apparently arose for the first time after receipt by the Respondent of the Termination Letter.

(b) At the time when the parties were exchanging correspondence regarding the Respondent's failure to comply with the remuneration provisions in the Playing Contract, the Respondent did not accuse Mr Marble of wrongdoing or misconduct.

(c) There is no contemporaneous evidence that Mr Marble was warned about his conduct, prior to the sending of the Termination Letter.

(d) The Respondent had not sought to initiate disciplinary action against Mr Marble, let alone impose a disciplinary sanction on him, prior to the sending of the Termination Letter.

(e) There is no credible evidence that Mr Marble misled the Respondent in the various respects now alleged.

(f) As noted above, Mr Marble was open and honest regarding his _____ and cooperated with the Respondent in relation to this issue.

(g) The Respondent did not suggest at the time, or give notice to Mr Marble, that he had failed any component of his physical examination.

(h) Mr Marble competed in a significant number of games for the Respondent prior to the sending of the Termination Letter.

(i) There is no credible evidence that Mr Marble malingered, or that he unreasonably failed to make himself available for selection.

56. In summary, the Arbitrator concludes as follows:

(a) Mr Marble terminated the Playing Contract on 21 December 2016 for just cause and is entitled to damages for breach of contract.

(b) Pursuant to Article III(B) of the Playing Contract, the Respondent was obliged to pay the cost of one business class round-trip airline ticket from Mr Marble's residence in the US to Thessaloniki.

(c) The Respondent failed, without justification, to pay the Agent Fee.

57. In terms of the quantum of the Award, taking the above matters in turn:

    (a) Notwithstanding the terms of Article IX of the Playing Contract (quoted in paragraph 6 above), Mr Marble gives credit for the sums earned in alternative employment following the termination of the Playing Contract on 21 December 2016. In the circumstances, the Arbitrator finds that it is just and equitable to award Mr Marble the sum of $115,000 in damages for breach of the Playing Contract (specifically, lost salary payments).

    (b) The Arbitrator notes that the invoice in Exhibit H to the RFA: (a) contains the outbound flight details but not the inbound flight details; and (b) lists the 'total cost' as USD 7,019.20, which is a greater sum than the amount claimed in the RFA. The Arbitrator is unsure of the reason for this discrepancy, and considers it appropriate to award the (lesser) sum claimed in the RFA – specifically, the sum of USD 6,531.90 (which is recorded on the invoice as the 'Net Credit Card Billing' amount).

    (c) The Agent Fee, to which Wasserman is entitled, was stipulated in Article IV of the Playing Contract to be USD 22,500.

58. With regard to the Claimants' claim for a late payment penalty, Article II of the Playing Contract provided that "*In the event any [salary] payments are more than twenty five (25) days late, Club acknowledges and agrees that it shall incur a late fee of USD $50.00 per day as a non-exclusive remedy to Player.*" The Arbitrator notes that Mr Marble's claim for a late payment penalty is confined to his November 2016 salary payment. As at 21 December 2016, Mr Marble's November 2016 salary payment was 50 days overdue; by the time the RFA was filed on 15 February 2017, this payment was 106 days overdue. The Arbitrator considers that: (a) the RFA was filed reasonably promptly by the Claimants; (b) the late payment daily rate of USD 50 is not excessive; and (c) in the circumstances, it is just and equitable to award

Mr Marble a late payment penalty in respect of this non-payment, in the sum of USD 4,050 (calculated as 81 days[4] x USD 50 per day).

8.3 Interest

59. In compliance with BAT jurisprudence the Arbitrator finds that an interest rate of 5% per annum is reasonable.

60. The Arbitrator finds that the period of interest shall run from 16 February 2017, namely the day following the filing of the RFA, until payment.

61. The Arbitrator does not make an award of interest in respect of the airplane ticket, having regard to the fact that this money was advanced to Mr Marble by Wasserman and not incurred personally by him at the time (albeit Mr Marble will now, presumably, be required to reimburse Wasserman for this advance payment / loan).

9. Costs

62. On 24 October 2017, pursuant to Article 17.2 of the BAT Rules, the BAT President determined the final amount of the costs of the arbitration to be EUR 7,610.00.

63. Article 17.3 of the BAT Rules provides that:

> "*The award shall determine which party shall bear the arbitration costs and in which proportion. In addition, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When deciding on the arbitration costs and on the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and,*

[4] I.e. 106 days minus 25 days.

secondarily, the conduct and the financial resources of the parties."

64. The Arbitrator considers it is fair and just, in the circumstances of this case, for the costs of the arbitration to be borne in full by the Respondent.

65. Since the Claimants paid EUR 10,000 in advances on arbitration costs the Arbitrator decides, in application of Articles 17.3 and 17.4 of the BAT Rules, that:

    i. The BAT shall reimburse EUR 2,390.00 jointly to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT President.

    ii. The Respondent shall pay jointly to the Claimants EUR 7,610.00 being the difference between the Advance on Costs paid by the Claimants and the amount that will be reimbursed to them by the BAT.

66. The Claimants request an amount of USD 11,815 for their legal fees and expenses, calculated as 27.8 hours' work at an hourly rate of USD 425. Neither the RFA nor the detailed account of costs identifies how this costs liability is divided between the Claimants, and accordingly the Arbitrator proceeds on the basis that it is shared equally between them.

67. Article 17.4 of the BAT Rules stipulates that where the sum in dispute is between EUR 100,001 and 200,000, the maximum contribution to a party's reasonable legal fees and other expenses (excluding the non-reimbursable handling fee) shall be EUR 10,000. The Arbitrator considers it would be just and equitable to order the Respondent to make a contribution jointly to the Claimants' legal fees in the sum of EUR 7,000, plus the non-reimbursable handling fee of EUR 3,000.

10. AWARD

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

1. **Aris BC (ARIS BSA 2003) shall pay Mr. Roy Devyn Marble USD 121,531.90 as damages for breach of contract, together with interest from 16 February 2017 until payment.**

2. **Aris BC (ARIS BSA 2003) shall pay Mr. Roy Devyn Marble USD 4,050 in late payment penalties.**

3. **Aris BC (ARIS BSA 2003) shall pay Wasserman Media Group, LLC. USD 22,500 in respect of agent fees, together with interest from 16 February 2017 until payment.**

4. **Aris BC (ARIS BSA 2003) shall pay jointly to Mr. Roy Devyn Marble and Wasserman Media Group EUR 7,610.00 as reimbursement of the advance on arbitration costs.**

5. **Aris BC (ARIS BSA 2003) shall pay jointly to Mr. Roy Devyn Marble and Wasserman Media Group EUR 10,000.00 as reimbursement of their legal fees and expenses.**

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

Geneva, seat of the arbitration, 7 November 2017

Raj Parker
(Arbitrator)