

FINAL ARBITRAL AWARD

(BAT 1436/19)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

CGL Sports LLC

7380 Spout Springs Road, Suite 210-120, Flowery Branch, GA 30542, USA

- Claimant -

represented by Mr. William W. McCandless, Jr., Esq., attorney at law,
1640 Delowe Drive SW, Atlanta, GA 30311, USA

vs.

Mr. Joseph Michael Young

- Respondent -

represented by Mr. Luca Pardo and Mr. Giulio Ciompi, attorneys at law,
Piazza Cavour 19, 00193 Rome, Italy

1. The Parties

1.1. The Claimant

1. According to the Request for Arbitration, the Claimants are "*CGL Sports and its owner, Christopher Luchey*". Paragraph 5.1.1 of the Request for Arbitration then names "*FIBA-certified agent, Chris Grier Luchey*" as the Claimant. The Power of Attorney refers only to Mr. Christopher Luchey.
2. However, according to the Player-Agent Agreement dated 8 May 2019, it is "*CGL SPORTS, LLC*" which shall be entitled to the agent fee. A limited liability company (LLC) is a legal entity with a legal personality separate from its owner.
3. As already mentioned in the Partial Award on Jurisdiction the Arbitrator interprets the Request for Arbitration to be filed solely by CGL Sports, LLC ("Claimant" or "CGL").

1.2. The Respondent

4. The Respondent is Mr. Joseph Michael Young, a professional basketball player from the USA ("Respondent" or "Player").
5. According to the Request for Arbitration, the Claimant sued not only Mr. Joseph Michael Young, but also Nan Jing TongXi Basketball Club, a basketball club located in China ("Club").
6. Since the Arbitrator issued a Partial Award on Jurisdiction on 4 February 2020 ordering that the BAT does not have jurisdiction to decide the claims raised against Nan Jing TongXi Basketball Club, CGL continued the present arbitral proceedings against Mr. Joseph Michael Young only.

2. The Arbitrator

7. On 16 October 2019, the President of the Basketball Arbitral Tribunal ("BAT"), Prof. Ulrich Haas, appointed Dr. Stephan Netzle as arbitrator ("Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force from 1 January 2017 ("BAT Rules"). None of the parties objected to his appointment or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

8. On 30 July 2018, the Respondent and the Club entered into an employment contract for the 2018/2019 season ("Employment Contract 18/19").¹ According to Article 7 of the Employment Contract 18/19, the Player's agents were Mr. Liu Wei and Mr. Kevin Bradbury of BDA Sports.
9. In spring 2019, CGL and the Player signed two different representation agreements. According to the first agreement dated 24 April 2019, CGL was entitled to represent the Player in conducting individual compensation negotiations and in assisting, advising or counselling the Player in connection with an employment within the NBA ("NBPA Standard Player Agent Contract").²

¹ Exhibit C of the Request for Arbitration.

² First part of Exhibit A of the Request for Arbitration; Exhibit C of the Claimant's submission dated 23 March 2020.

10. On 8 May 2019, CGL and the Player concluded a second representation agreement ("Player-Agent Agreement").³ According to the Player-Agent Agreement, CGL was the exclusive representative of the Player also for the negotiation and conclusion of an employment contract with a club outside of the NBA.
11. In June 2019, the Player became aware that Messrs. Rade Filipovich and Zhang Jii, with whom he had never signed any contracts, were listed as his agents with the Chinese Basketball Association ("CBA"). On 27 June 2019, the Player notified the CBA that Messrs. Rade Filipovich and Zhang Jii were not his agents and that he was also no longer represented by Mr. Kevin Bradbury. Furthermore, he notified the CBA that Mr. Christopher Luchey from CGL was acting as his agent since 9 April 2019.⁴
12. In July 2019, a Club's representative sent a draft of the employment contract of the Player for the 2019/2020 season ("Draft Employment Contract 19/20")⁵ to Mr. Grant Zhou Yang who was named as the representative of the Player in that Draft Employment Contract 19/20. The base salary for the 2019/2020 season was, according to Article 4.1, USD 2,563,300.00 and the agent fee USD 256,330.00, *"which shall be no more than 10% of Party B's [the Player's] total annual salary"* (Article 8.1). According to the Draft Employment Contract 19/20, the agent fee shall be borne by the Player.
13. This Draft Employment Contract 19/20 was never signed by the parties.
14. On 10 July 2019, the assistant of Mr. Grant Zhou Yang informed CGL that Mr. Grant Zhou Yang was erroneously mentioned as the representative of the Player in the Draft

³ Second part of Exhibit A of the Request for Arbitration.

⁴ Exhibit E of the Request for Arbitration; Exhibit D of the Claimant's submission dated 23 March 2020.

⁵ Exhibit G of the Request for Arbitration.

Employment Contract 19/20 instead of CGL.⁶ On the same date, Mr. Grant Zhou Yang forwarded the Draft Employment Contract 19/20 to CGL.⁷

15. On 10 and 11 July 2019, the Claimant was in direct contact with his Chinese speaking assistant and representatives of the Club to ensure that the Club has all necessary information to amend the contract accordingly.⁸
16. During this conversation, a representative of the Club showed the Claimant a text message of the Player in which the latter said that his agent is not the Claimant but Mr. Kevin Bradbury.⁹ Due to this uncertainties, a Club's representative requested a confirmation of the Player that his agent is the Claimant.¹⁰ The Claimant then forwarded the Player's confirmation, which he had sent to the CBA in summer 2019.¹¹
17. Later on 11 July 2019, a Club's representative sent an amended employment agreement ("Amended Draft Employment Contract 19/20") to CGL per e-mail and WeChat. The Club set a deadline until 13 July 2019 for the Player to accept this amended contract.¹²
18. The Amended Draft Employment Contract 19/20 mentions both, Messrs. Chris Grier Luchey and Grant Zhou Yang as the Player's agents.¹³ Also this contract determined

⁶ Exhibit H of the Request for Arbitration.

⁷ Exhibit F of the Request for Arbitration.

⁸ Exhibit I, J and K of the Request for Arbitration; Exhibit F, G and N of the Claimant's submission dated 23 March 2020, with English translation submitted on 23 April 2020.

⁹ Exhibit O of the Claimant's submission dated 23 March 2020.

¹⁰ Exhibit P of the Claimant's submission dated 23 March 2020, with English translation submitted on 23 April 2020.

¹¹ Exhibit P of the Claimant's submission dated 23 March 2020.

¹² Exhibit K, L and M of the Request for Arbitration; Exhibit H and I of the Claimant's submission dated 23 March 2020.

¹³ Exhibit N of the Request for Arbitration; Exhibit J of the Claimant's submission dated 23 March 2020.

the base salary of the Player to be USD 2,563,300.00 for the 2019/2020 season (Article 4.1) and the agent fee to be USD 256,330.00 (Article 8.1). According to the Amended Draft Employment Contract 19/20, the agent fee shall be borne by the Player.

19. Also this Amended Draft Employment Contract 19/20 was never signed by the parties.
20. Still on the same date, the Claimant asked the Club why Mr. Grant Zhou Yang is still mentioned as an agent in the Amended Draft Employment Contract 19/20 and received the answer that Mr. Grant Zhou Yang is the Player's Chinese agent.¹⁴
21. On the same day, (i.e. on 11 July 2019), at 3:33 p.m., the Player sent a letter to CGL by which he terminated the NBPA Standard Player Agent Contract as well as the Player-Agent Contract ("Termination Letter"):¹⁵

"I have decided to move on from CGL and Chris Greer Luchey for my professional basketball representation. I understand the termination clause in our agreement either of us may terminate the relationship at any time in writing, and I am choosing to do so with immediate effect. This email is effective immediately for both the NBA and Europe and China. Please stop all activities on my behalf immediately."

22. Between 17 July 2019 and 1 August 2019¹⁶, the Player signed a new employment contract with the Club for the 2019/2020 season¹⁷, according to which Mr. Kevin Bradbury was acting as his agent ("Final Employment Contract 19/20").

¹⁴ Exhibit K of the Request for Arbitration; Exhibit H of the Claimant's submission dated 23 March 2020.

¹⁵ Exhibit O of the Request for Arbitration; Exhibit M of the Claimant's submission dated 23 March 2020.

¹⁶ Since the Final Employment Contract 19/20 was not submitted as evidence in these proceedings, the Arbitrator cannot determine the exact signing date.

¹⁷ See Exhibit R of the Claimant's submission dated 23 March 2020.

23. CGL is requesting from the Player a remuneration for its services in the amount of 10% of the annual salary of the Player for the 2019/2020 and 2020/2021 seasons.

3.2. The Proceedings before the BAT

24. On 11 October 2019, CGL filed a Request for Arbitration against the Respondent.

25. By letter dated 21 October 2019, the BAT Secretariat (a) notified the parties of the Arbitrator's appointment; (b) invited the Respondent to file an Answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules by no later than 11 November 2019; and (c) fixed the amount of the Advance on Costs to be paid by the parties by 31 October 2019 as follows:

Claimant (CGL Sports, Mr. Luchey)	EUR 6,000.00
Respondent 1 (Mr. Joseph Michael Young)	EUR 3,000.00
Respondent 2 (Nan Jing TongXI BC)	EUR 3,000.00

26. On 11 November 2019, the Player requested an extension of the time limit by 20 days to file his Answer.
27. By letter of 12 November 2019, the BAT Secretariat (a) noted that the parties had failed to pay their shares of the Advance on Costs and fixed a final deadline for the payment until 26 November 2019; (b) granted the Player's extension as requested and invited him to file his Answer by no later than 2 December 2019; and (c) requested the Club to file its Answer by no later than 26 November 2019.
28. On 2 December 2019, i.e. within the extended time limit set by the BAT Secretariat, the Player raised an objection of lack of jurisdiction of the BAT to hear this case.
29. The Club did not provide any comments regarding the present dispute.

30. By letter dated 3 December 2019, the BAT Secretariat acknowledged receipt of the Claimant's share of the Advance on Costs (i.e. EUR 6,000.00). Since the Respondent and the Club had failed to pay any Advance on Costs, CGL was invited to pay the other shares of the Advance on Costs by no later than 13 December 2019 to ensure that the arbitration proceeds. Moreover, the BAT Secretariat informed that the Player had submitted an Answer while the Club had failed to file any Answer.
31. By letter dated 16 December 2019, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs (i.e. EUR 12,000.00) paid by CGL. In the same letter, the BAT Secretariat invited CGL, on behalf of the Arbitrator, *inter alia*, to comment on the Player's objection by no later than 2 January 2020 and to describe for the Player and the Club individually why and on what basis the BAT had jurisdiction in this matter.
32. On the same day, CGL provided its comments on the Player's objection to the jurisdiction of the BAT.
33. By email dated 17 December 2019, the BAT Secretariat acknowledged receipt of the Claimant's comments and invited the Respondent and the Club, on behalf of the Arbitrator, to comment on CGL's submission by no later than 7 January 2020.
34. By letter dated 3 January 2020, the Player filed his comments on CGL's statements regarding the jurisdiction of the BAT. Again, the Club did not submit any comments.
35. By Partial Award dated 4 February 2020, the Arbitrator affirmed the jurisdiction of the BAT to decide the CGL's claim against the Player. He denied, however, the jurisdiction of the BAT regarding CGL's claim against the Club. The BAT Secretariat then informed the parties that the arbitral proceeding BAT 1436/19 continues between CGL and the Player only. As the Player had not yet submitted any comments on the merits, the BAT Secretariat invited him on 4 February 2020 to comment on the Claimant's arguments by no later than 14 February 2020.

36. By e-mail dated 19 February 2020, the BAT Secretariat granted the Respondent a short time extension until 26 February 2020 to file his comments.
37. On the same day, the Claimant's counsel informed the BAT Secretariat that the Claimant objects against this further deadline extension because the Player had more than enough time to complete his Answer.
38. On 3 March 2020, the Claimant's counsel drew the BAT's attention to the fact that the Player had failed to provide any comments within the granted deadline and requested the BAT to continue with the procedure.
39. By letter dated 12 March 2020, the BAT Secretariat noted that the Respondent failed to submit an Answer on the merits to the Request for Arbitration and invited the Claimant to answer several questions of the Arbitrator until 23 March 2020.
40. On 23 March 2020, the Claimant answered the Arbitrator's questions and objected against the invitation of the BAT to allow the Respondent to reply the Claimant's submission because the Respondent already missed the deadline to file an Answer on the merits.
41. By email dated 26 March 2020, the BAT Secretariat acknowledged receipt of the Claimant's submission and invited the Respondent to comment on the Claimant's reply by no later than 9 April 2020.
42. On 13 April 2020, the Claimant's counsel noted that (a) the Respondent failed to make any payment to the BAT; (b) failed twice to provide an Answer on the merits; and (c) failed again to comment on the Claimant's responses to the questions asked by the Arbitrator. Furthermore, the Claimant requested the Arbitrator to take these defaults into account and close the arbitral procedure by assessing the damages and the Claimant's expenditures regarding this procedure.

43. By letter dated 15 April 2020, the BAT Secretariat acknowledged that the Respondent had failed to comment on the Claimant's responses to the Arbitrator's questions. Furthermore, the BAT Secretariat informed the parties that some pages of the Claimant's exhibit file are only in Chinese without a translation into English, and invited the Claimant to provide the BAT Secretariat with a translation of the Chinese part of the exhibits by no later than 27 April 2020; otherwise, the Arbitrator would not consider the Chinese exhibits.
44. By email dated 23 April 2020, the Claimant submitted the requested translations.
45. On 27 April 2020, the BAT Secretariat (a) acknowledged receipt of the translations submitted by the Claimant; (b) declared the exchange of submissions complete and that the final award would be rendered as soon as possible; and (c) granted the parties a deadline until 4 May 2020 to provide a detailed account of their costs.
46. By email dated 30 April 2020, the Claimant's counsel submitted a statement for his legal fees and disbursements.
47. On 2 May 2020, the Claimant itself provided the BAT Secretariat with a statement for its expenses during this procedure.
48. By email dated 5 May 2020, the BAT Secretariat acknowledged receipt of the account of costs submitted by the Claimant and its counsel and (b) noted that the Respondent failed to submit his account of costs.
49. On the same day, the BAT received the Respondent's belated cost submission, whose receipt was confirmed by the BAT Secretariat on the same day.

50. By email dated 11 May 2020, the BAT Secretariat informed the parties that the Arbitrator will decide on the admissibility of the Respondent's belated cost submission in the final award.

4. The Positions of the Parties

4.1. Claimant's Position

51. The Claimant claims that it is entitled to compensation for mediating in favour of the Respondent his transfer to the Club. Since this is a Non-NBA-Club, the agent fee is regulated by the Player-Agent Agreement.
52. According to Article 2 of the Player-Agent Agreement, the Claimant is entitled to receive 10% of the Respondent's base salary for each year under contract with a Non-NBA Club, provided that the relevant contract entered into force or was negotiated during the term of the Player-Agent Agreement.
53. The Claimant is entitled to an agent fee of 10% of the Respondent's base salary of the 2019/2020 and 2020/2021 seasons since both seasons are covered by the term of the Player-Agent Agreement.
54. The Player-Agent Agreement was, according to Article 3, concluded for a term of at least two years without any possibility of early termination. Therefore, its rights to receive the agent fees for the 2019/2020 and 2020/2020 seasons remained unaffected by the Termination Letter.
55. Regarding its agent fee for the 2019/2020 season, the Claimant argues that the Respondent signed the Final Employment Contract 19/20 shortly after receipt of the Respondent's Termination Letter. At that time, Mr. Kevin Bradbury was acting as the Respondent's agent. The base salary of the Respondent remained the same as

stipulated in the Draft Employment Contract 19/20 and the Amended Draft Employment Contract 19/20, i.e. USD 2,563,300.00. The Claimant learned from many people, including the Respondent's father that the salary stipulated in the Final Employment Contract 19/20 was the same as in the previous drafts. The salary and the agent fee almost certainly stayed the same or were even improved in some way by the new agent, i.e. Mr. Kevin Bradbury. Otherwise, the change of the agent would not have made sense. Therefore, it would be odd to assume that the salary and the agent fee were lowered in the Final Employment Contract 19/20. For this reason, the Claimant is entitled to an agent fee in the amount of USD 256,300.00 for the 2019/2020 season. Since the Club was not willing to pay the agent fee to the Claimant, the Respondent is obliged to do so by Article 2 of the Player-Agent Agreement.

56. Regarding the agent fee for the 2020/2021 season, the Claimant accepts that a decision on this agent fee is not yet "*ripe for adjudication*" and will remain so until the Respondent signs an employment contract for the 2020/2021 season.
57. The Claimant is convinced that the Player and the Club conspired with Mr. Kevin Bradbury to have the Respondent terminate the representation contracts with the Claimant and to avoid the obligation to pay the agreed agent fee to the Claimant for the following reasons: First, the Respondent had no reason to terminate the representation contracts on 11 July 2019. Earlier on the same day he had still exchanged pleasantries with the Claimant¹⁸ although he informed the Club later that day that his agent was Mr. Kevin Bradbury and not the Claimant¹⁹. Second, after receipt of the Termination Letter, the Respondent never answered the calls and text messages of the Claimant. Third, the

¹⁸ Exhibit K of the Claimant's submission dated 23 March 2020.

¹⁹ Exhibit O of the Claimant's submission dated 23 March 2020.

Club was fully aware that the Claimant was the sole agent of the Respondent and that Mr. Kevin Bradbury had been fired months ago.²⁰

58. The Claimant has always worked hard for the Respondent and contacted numerous teams in order to find an employment for him. Therefore, the Claimant shall be reimbursed for its work.
59. Finally, the Claimant emphasizes that the Respondent failed several times during the present proceedings to comply with deadlines set by the BAT.

4.2. Claimant's Request for Relief

60. In its Request for Arbitration dated 11 October 2019, the Claimant requests the following relief:

"The Claimant hereby requests BAT to:

- 1) *Order the Respondents to pay to the Claimant an agent fee in the amount of \$256,330 USD;*
- 2) *Order the Respondents to pay to Claimant ten percent (10%) of Young's base salary in 2020-21, if and only if Respondent Young returns to play for Respondent TonXi in season 2020-21, or, order Respondent Young to pay to Claimant ten percent (10%) of Young's base salary (if Young plays elsewhere in 2020-21).*
- 3) *Order the Respondents to pay interest on any award at a rate of 5% or, in the alternative, with the interest rate decided by the BAT Arbitrator ex aequo et bono.*
- 4) *Hold that the costs of the present arbitration be borne by the Respondents.*

²⁰ Exhibit E of the Request for Arbitration.

5) *Order Respondents to reimburse the Claimant arbitration fees as well as his legal fees and other expenses, to be ascertained. (Claimant[sic] Young expressly agreed to reimburse such fees, including the non-reimbursable handling fee)."*

61. In its submission dated 23 March 2020, the Claimant amended the requests for relief as follows:²¹

"The Claimant concedes that, as of the writing of this memo, a decision on 2020-2021 fee is not 'ripe for adjudication' and will remain so until Young signs an employment contract for 2020-21. As such, in this action, the Claimant seeks \$256,330, plus ALL expenses (including even the payment of the non-refundable BAT fee [...] and legal fees."

4.3. Respondent's Position

62. While the Respondent provided the BAT Secretariat with a response on jurisdiction, he failed to submit any comments on the merits. In his submission on jurisdiction, he merely stated that the BAT shall take into account the reasons why he has terminated the representation contracts with CGL and that he would be available for a hearing to explain these reasons. However, although invited by the BAT, he neither provided the BAT with his Answer on the merits nor with comments on the Claimant's answers to the questions asked by the Arbitrator on 12 March 2020.

4.4. Respondent's Request for Relief

63. In his submission on jurisdiction, the Player submitted the following prayers for relief:

"It is respectfully requested that Claimant's claims be dismissed in their entirety,

²¹ Footnote 7 of the Claimant's submission dated 23 March 2020.

and that Respondent(s) be awarded any costs and attorney's fees, due to the lack of jurisdiction of the BAT on this case."

5. Jurisdiction of the BAT

64. In the Partial Award on Jurisdiction issued on 4 February 2020, the Arbitrator affirmed the jurisdiction of the BAT to decide the Claimant's claim against the Player. The Arbitrator denied, however, the jurisdiction of the BAT to decide the claim against the Club. For this reason, the arbitral proceeding continued between CGL and the Player only.

6. Other procedural issues

6.1. Applicable BAT Rules

65. The BAT Rules of 1 December 2019 are applicable to Requests for Arbitration received by the BAT Secretariat on or after that date.

66. Since the present Request for Arbitration was received by the BAT Secretariat on 11 October 2019, the BAT Rules Version 2017 are applicable in the present case.

6.2. No Answer

67. Article 14.2 of the BAT Rules specifies that *"the Arbitrator may [...] proceed with the arbitration and deliver an award"* if *"the Respondent fails to submit an Answer"*. The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT. However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

68. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. He was also repeatedly given opportunity to respond to the Claimant's Request for Arbitration and also to the Claimant's responses to the Arbitrator's questions. The Respondent, however, chose not to comment on the merits of the claim.

6.3. Reasoned Award

69. According to Article 16 of the BAT Rules, the Arbitrator shall give a written, dated and signed award, which shall include reasons unless the value of the dispute does not exceed EUR 100,000.00.

70. Since the value of the present dispute is USD 256,330.00, the Arbitrator issues a reasoned award.

7. Discussion

7.1. Applicable Law – ex aequo et bono

71. Article 5 of the Player-Agent Agreement reads as follows:

"(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, USA, without regard to conflicts of laws principles.

*(b) Any dispute arising hereunder related to any Non-NBA Player Contract shall be submitted to the Basketball Arbitral Tribunal ('**BAT**') in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT 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, irrespective of the parties' domicile. The language of the*

arbitration shall be English.

[...]"

72. The Arbitrator notes that the dispute resolution clause does not explicitly provide for a decision based on the principle of *ex aequo et bono*. However, according to Article 5 lit. b of the Player-Agent Agreement, any dispute arising out of this contract shall be resolved in accordance with the BAT Rules. Based on Article 15.1 of the BAT Rules, the Arbitrator shall decide the disputes according to the principle of *ex aequo et bono*.
73. By letter dated 16 December 2019, the Arbitrator offered the parties the following two options:
- The contract shall be interpreted according to the laws of Georgia with the possible consultation of a US law specialist; or
 - The contract shall be interpreted and the dispute shall be decided according to the *ex aequo et bono* principle whereby the wording of the agreement and the case-law of the BAT play an important role.
74. While the Claimant confirmed in its submission dated 16 December 2019 that the Player-Agent Agreement shall be interpreted and the dispute shall be decided based on the principle *ex aequo et bono*, the Respondent did not comment on the applicable law in the present case.
75. The Arbitrator notes that neither party submitted arguments referencing to the laws of Georgia. Moreover, the Claimant expressly argues that *ex aequo et bono* is the

applicable law, and the Respondent did not object. According to the BAT jurisprudence, this justifies the application of the principle of *ex aequo et bono*.²²

76. Furthermore, according to the jurisprudence of the BAT, the parties' agreement to have decided any dispute by the BAT (under its rules) had to be understood as *lex specialis derogat legi generali* with regard to general references to national laws in a player contract.²³
77. Consequently, the Arbitrator concludes to decide the issues submitted to him in these proceedings based on *ex aequo et bono*.
78. The concept of "équité" (or *ex aequo et bono*) used in Article 187(2) of the Swiss Private International Law Act ("PILA") originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage*²⁴ (Concordat)²⁵, 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."*²⁶

²² See e.g. BAT 0563/14; BAT 0683/15; BAT 0769/15.

²³ See e.g. BAT 0692/15.

²⁴ 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).

²⁵ P.A. KARRER, Basler Kommentar, No. 289 ad Article 187 PILA.

²⁶ JdT 1981 III, p. 93 (free translation).

79. 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*".

80. In light of the foregoing considerations, the Arbitrator makes the findings below.

7.2. Findings

81. The Claimant signed two representation agreements with the Player: (a) an agreement about a possible transfer of the Player to a NBA-Club (i.e. the NBPA Standard Player Agent Contract dated 24 April 2019)²⁷ and (b) an agreement about a possible transfer of the Player to a Non-NBA-Club (i.e. the Player-Agent Agreement dated 8 May 2019)²⁸.

82. Since the Respondent has not been transferred to a NBA-Club, but to the Nan Jing TongXi Basketball Club, i.e. a Non-NBA-Club, the present dispute falls in the scope of the Player-Agent Agreement.

7.2.1 Valid termination of the Player-Agent Agreement by the Termination Letter?

83. First, the question arises whether the Player has legally terminated the Player-Agent Agreement by the Termination Letter and, thus, is no more bound by the obligations arising out of that contract.

84. The term of the Player-Agent Agreement is regulated in Article 3, which reads as follows:

*"3. **Term.** This Agreement shall have a term of two (2) years, commencing as of*

²⁷ First part of Exhibit A of the Request for Arbitration.

²⁸ Second part of Exhibit A of the Request for Arbitration.

the date hereof ('Initial Term'), and shall automatically be renewed for additional one (1) year periods thereafter (each, a 'Renewal Term' and together with the Initial Term, the 'Term') unless any Renewal Term is declined by either party by notifying the other party in writing at least thirty (30) days prior to the end of the Term. Upon the expiration or termination of this Agreement, you [Player] agree that (a) for the twelve (12) months following such expiration or termination, you [Player] will not permit yourself to be represented, directly or indirectly, by any person who was employed by or affiliated with CGL Sports at any time during the preceding twelve (12) months, and (b) CGL Sports shall continue to be entitled to fees based upon the terms set forth in Section 2 above. The foregoing sentence shall survive the termination or expiration of this Agreement."

85. In other words, the Player-Agent Agreement was concluded for a term of two years since 8 May 2019 with an automatic renewal for one additional year unless such a renewal is declined by either party.
86. The Player stated in his Termination Letter dated 11 July 2019 that according to the termination clause in the agreements, either of the parties may terminate the relationship at any time in writing.
87. While the NBPA Standard Player Agent Contract foresees in Article 6 a possibility to terminate the contract early under certain conditions, the Player-Agent Agreement does not.
88. According to well-established case law of the BAT, which is in line with various legal systems, a continuing contract can still be terminated early in case of just cause (e.g. in case of a severe breach of contract by one party which makes the continuation unacceptable for the other party).

89. The Player has not presented any explanation why he has terminated the representation agreements with the Claimant on 11 July 2019 although he had every opportunity to do so. The Arbitrator is therefore not in the position to examine whether the Player had any good reasons to terminate these contracts early. Accordingly, as the Player bears the burden of proving that he had just cause to terminate, he has not met that burden and the Arbitrator must assume that the Player's termination was without just cause.
90. The Arbitrator therefore concludes that the Termination Letter does not have any effect on the obligations of the parties arising out of the Player-Agent Agreement.

7.2.2 Claims arising out of the Player-Agent Agreement

91. According to Article 2 lit. a of the Player-Agent Agreement, the Claimant shall be entitled to the following agent fee for its services in seeking out and negotiating offers from Non-NBA-Clubs:

"(a) Non-NBA Clubs. For its services in seeking out and negotiating offers from Non-NBA-Clubs, CGL SPORTS shall be entitled to receive an amount equal to ten percent (10%) of your [Player's] base salary ('Non-NBA Fee') for each contract year under any Non-NBA Club player contract ('Non-NBA Contract') which is entered into, or on which negotiations commenced, during the Term (as defined below). If a Non-NBA Contract does not provide for the payment of the Non-NBA Fee to CGL Sports and the applicable Non-NBA Club does not pay CGL SPORTS the Non-NBA Fee, then you [Player] agree to pay the Non-NBA Fee to CGL SPORTS. You [Player] agree to execute any additional documents necessary to effectuate the intent of the foregoing, and acknowledge that CGL Sports cannot guarantee that any Non-NBA Contract will be enforceable."

92. Based on this provision of the Player-Agent Agreement, CGL requested jointly from the Player and the Club a remuneration for its services provided under the Player-Agent

Agreement in the amount of 10% of the annual salary of the Player for the 2019/2020 and 2020/2021 seasons. CGL however accepted that the claim for the Player's salary for the 2020/2021 season was too early to be decided in this proceeding (see paragraph 56 above).

93. As already decided in the Partial Award on Jurisdiction dated 4 February 2020, the BAT is not competent to hear the claim against the Club due to lack of a valid arbitration clause. The only question to resolve at this point is therefore whether the Claimant can seek payment of 10% of the Player's salary for the 2019/2020 season from the Player.
94. Article 2 of the Player-Agent Agreement explicitly states that the Player is obliged to pay the agent fee in case his employment contract does not foresee that his employer has to pay the agent fee to the Claimant and the employer failed to execute the corresponding payment.
95. The Draft Employment Contract 19/20²⁹ and the Amended Draft Employment Contract 19/20³⁰ both foresee the following provision concerning the agent fee:

"The agent fee shall be borne by Party B [Player], which amounts to USD 256'330 (which shall be no more than 10% of Party B's total annual salary)."

96. Although the Final Employment Contract 19/20 was not submitted as evidence in these proceedings, it is unlikely that the Club accepted that this provision would be changed in the Final Employment Contract 19/20 and that it was now the Club which undertook to pay the agent fee instead of the Player. Moreover, it would have been the obligation of the Player to prove that according to the Final Employment Contract 19/20, the Club has

²⁹ Exhibit G of the Request for Arbitration.

³⁰ Exhibit N of the Request for Arbitration.

overtaken the payment obligations of the Player against the Claimant. However, the Player did not submit corresponding evidence. Furthermore, also the Club did not provide any comments in the present proceedings and, in particular, did not argue that it already paid the agent fee for the transfer of the Player.

97. For these reasons, the Arbitrator concludes that neither the Club nor the Player already paid any remuneration to the Claimant in relation to the Final Employment Contract 19/20.
98. According to the clear wording of Article 2 of the Player-Agent Agreement and the absence of any evidence to the contrary, the Respondent is in such a case obliged to reimburse the Claimant for its services rendered under the Player-Agent Agreement. In other words, the Claimant is entitled to an agent fee of 10% of the Player's yearly salary for each contract signed or at least negotiated within the term of the Player-Agent Agreement.
99. Since the Final Employment Contract 19/20 was not submitted as evidence in these proceedings, the Arbitrator cannot determine the exact signing date.
100. However, the Arbitrator is convinced that the Final Employment Contract 19/20 must have been concluded between 17 July 2019 and 1 August 2019 for the following reasons:
101. On 17 July 2019, the Claimant and the Club's president exchanged the following text messages³¹:

President: "Are you young's agent?"

If he doesn't make a decision before August 1st, he will lose his chance

³¹ Exhibit J of the Request for Arbitration; Exhibit R of the Claimant's submission dated 23 March 2020.

to play in cba now and in the future."

Claimant: "You know the deal. I am young agent. Then. He has sent a message to you saying now his agent is Kevin Bradbury. We are working the details out soon hopefully. Complicated."

102. This conversation between the Claimant and the Club's president inevitably leads to the conclusion that the Player and the Club did not sign the Final Employment Contract 19/20 before 17 July 2019.
103. On 1 August 2019, the president of the Club confirmed to the Claimant that the Player signed the Final Employment Contract 19/20.³²
104. Therefore, the Final Employment Contract 19/20 must have been signed by the Club and the Player between 17 July 2019 and 1 August 2019.
105. Since the Player-Agent Agreement has a term of at least two years since 8 May 2019, the Final Employment Contract 19/20 was concluded during the term of the Player-Agent Agreement, and the Player-Agent Agreement is applicable to the conclusion of the Final Employment Contract 19/20.
106. According to Article 2 of the Player-Agent Agreement, the Claimant is entitled to an agent fee in the amount of 10% of the Respondent's base salary.

³² Exhibit J of the Request for Arbitration; Exhibit R of the Claimant's submission dated 23 March 2020.

107. Since the Final Employment Contract 19/20 was not submitted in the present proceedings, the Arbitrator cannot determine the Respondent's base salary for the 2019/2020 season with certainty.

108. However, the Arbitrator deems that the Respondent's base salary was no less than USD 2,563,300.00 for the following reasons:

- Both the Draft Employment Contract 19/20 and the Amended Draft Employment Contract 19/20 foresee a base salary for the Player for the 2019/2020 season in the amount of USD 2,563,300.00.
- It is difficult to believe that the Player would have agreed on a new contract with a lower salary than the two drafts before. In any event, the Player did not contest that his base salary under the Final Employment Contract 19/20 for the 2019/2020 season was USD 2,563,300.00 although he had several opportunities to comment on the allegations made. Furthermore, he did not argue that he received less salary than agreed.

109. The Arbitrator therefore concludes that the base salary of the Player for the 2019/2020 season was USD 2,563,300.00 and that the Claimant is entitled to an agent fee of 10% thereof, as set out in the Player-Agent Agreement. The agent fee for the 2019/2020 season therefore amounts to USD 256,330.00.

110. Considering the amendment of the Claimant's requests for relief in its submission of 23 March 2020, the Arbitrator does not address the question whether the Claimant is entitled to 10% of the Player's salary in the 2020/2021 season.

7.3. Interest

111. The Claimant requests in its Request for Arbitration the BAT to *"order the Respondents to pay interest on any award at a rate of 5% or, in the alternative, with the interest rate decided by the BAT Arbitrator ex aequo et bono"*.
112. The Player-Agent Agreement does not provide for interest. However, according to standing BAT jurisprudence³³, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle, which is embodied in most legal systems. As requested by the Claimant and in correspondence with the standing BAT jurisprudence the default interest rate is 5% per annum.
113. As to the date from which the interest starts to run, the Arbitrator notices that the Player-Agent Agreement does not foresee a due date for the payment of the agent fee. Nevertheless, the Claimant provided the Player at the latest by filing the Request for Arbitration with the opportunity to comply with the payment obligation. Thus, the interest start date is the day after the submission of the Request for Arbitration on 11 October 2019, i.e. 12 October 2019.

8. Conclusion

114. Based on the foregoing, and after taking into due consideration all the evidence submitted and all arguments made by the parties, the Arbitrator finds that the Respondent is obliged to pay the Claimant an agent fee in the amount of 10% of his base salary in the 2019/2020 season, i.e. in total the amount of USD 256,330.00, plus interest of 5% per annum since 12 October 2019. The Arbitrator further notes that the present

³³ See e.g. BAT 0685/15.

matter in dispute is limited to the agent fee in relation to the 2019/2020 season (cf. also supra no. 56, 61). The Arbitrator can only decide upon the requests submitted by the Claimant. Whether the Claimant is entitled to an agent fee in relation to the 2020/2021 season is not at stake in these proceedings.

9. Costs

115. This cost decision concerns both, the Partial Award on Jurisdiction of 4 February 2020 and this Final Award.

9.1. Arbitration Costs

116. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

“At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). [...]”

117. On 6 June 2020, the BAT President determined the arbitration costs in the present matter to be EUR 12,000.00.

118. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:

“The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

119. As the Claimant was successful in its claim against the Respondent but at the same time considering the fact that the Claimant brought the action not only against the Player but also against the Club, although there is no valid arbitration clause between the Claimant and the Club, the Arbitrator finds it fair and adequate that the Claimant shall bear 25% and the Respondent 75% of the whole arbitration fees and costs (including the costs of the Partial Award). The Club is not a party of these proceedings and shall, therefore, not be charged with any procedural costs.
120. Given that the Claimant paid the entire Advance on Costs in the amount of EUR 12,000.00, the Respondent shall reimburse EUR 9,000.00 to the Player.

9.2. Legal Fees

121. The Claimant requests a contribution to its legal fees in the total amount of USD 7,340.00 plus USD 45.40 for expenses (copying, scanning, printing). Furthermore, the Claimant requests a compensation for translation costs in the amount of EUR 901.00. The Claimant understands this contribution without the non-reimbursable handling fee of EUR 5,000.00.
122. The Respondent did not file his cost submission within the deadline granted by the BAT, but only with one day delay. He requests a contribution to his legal fees in the total amount of EUR 7,176.00.
123. The maximum contribution for an amount in dispute between EUR 200,000.00 and EUR 500,000.00 excluding handling fee according to Article 17.4 of the BAT Rules is EUR 15,000.00.

124. In the present proceedings the amount in dispute is USD 256,330.00, which corresponds to more than EUR 200,000.00³⁴.
125. Considering the extensive work required from the Claimant's counsel in this case, the Arbitrator finds it reasonable that the Respondent shall pay to the Claimant USD 5,000.00 and EUR 901.00 as well as the non-reimbursable handling fee of EUR 5,000.00.
126. Regarding the cost submission of the Respondent, the Arbitrator notices the following: The Respondent failed several times to comply with the BAT's requests within the granted deadlines. Therefore, the Arbitrator decides not to consider the Respondent's cost submission. The requested reimbursement of EUR 7,176.00 would not be justified in any case considering the fact that the Respondent did not prevail in its defence against the claim and did not provide any comments on the merits in the present procedure.

³⁴ Date of currency conversation on both dates, the filing of the Request for Arbitration and the present award.

AWARD

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

- 1. Mr. Joseph Michael Young shall pay CGL Sports, LLC a total amount of USD 256,330.00 as an agent fee for the 2019/2020 season, plus interest at 5% per annum on such amount from 12 October 2019 until payment in full.**
- 2. Mr. Joseph Michael Young shall pay CGL Sports, LLC an amount of EUR 9,000.00 as reimbursement for its arbitration costs.**
- 3. Mr. Joseph Michael Young shall pay CGL Sports, LLC the amounts of USD 5,000.00 and EUR 5,901.00 as reimbursement for its legal fees and expenses.**
- 4. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 15 June 2020

Stephan Netze
(Arbitrator)