Arbitration CAS 2021/A/8251 Olea Sports Capital LLC v. FC Lokomotiv Moscow & Football Union of Russia (FUR), award of 25 April 2023

Panel: Mr Edward Canty (United Kingdom), Sole Arbitrator

Football
Failure to pay contractually agreed amounts with regard to the provision of intermediary services
Duty to raise procedural issues as soon as possible
Form of contracts
Consequences of the failure to follow regulatory requirements on the validity of contracts
Costs incurred in relation to the first instance proceedings

1. **There is a general incumbrance on parties to raise any procedural issues as soon as practicable for due consideration to be given and, if possible and appropriate, remedied if possible.**

2. **Contracts can be concluded in different forms, written or oral, and remain legally enforceable. Absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement. However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof.**

3. **A failure to follow regulatory requirements as regards contracts between clubs and agents does not render the contract legally unenforceable. However, it may result in one or both parties being subject to a sanction in accordance with the applicable regulations. It is therefore entirely possible for a contract to not be regulatory compliant yet still be legally enforceable.**

4. **Costs referrable to first instance proceedings are not recoverable.**

I. PARTIES

1. Olea Sports Capital LLC (the "Appellant" or "Olea") is a football agency with its registered office in Moscow, Russian Federation.

2. FC Lokomotiv Moscow (the "First Respondent" or "Lokomotiv") is a football club with its registered office in Moscow, Russian Federation. Lokomotiv is registered with the Football Union of Russia ("FUR"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA") and is currently participating in the Russian Premier League.

3. Football Union of Russia (the "Second Respondent" or "FUR") is the governing body of football in the Russian Federation with its registered office in Moscow, Russian Federation. The FUR is a member of the Union of European Football Associations ("UEFA") and FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings[1]. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. Background Facts

5. On 27 August 2019, Lokomotiv and FC Inter Milan ("Inter") signed a loan agreement in respect of the temporary transfer of the Portuguese player, A. (the "Player") and Lokomotiv and the Player signed a playing contract valid for a period of eleven months (the "Playing Contract").

6. Lokomotiv requested the assistance of Olea to agree an extension to the Playing Contract with the Player to ensure the Player was available to complete the European and international tournaments with Lokomotiv that summer, which resulted in the signing of an extension to the Playing Contract on 19 June 2020 to 31 July 2020 (the "Additional Agreement").

7. At this time, there were oral and written discussions between Olea and Lokomotiv as to the remuneration to be paid to Olea for its services to Lokomotiv. An agreement detailing the arrangements between Lokomotiv and Olea was produced (the "Commission Agreement") which stated, *inter alia*, as follows:

> *"1.1 Under this Contract the Club engages and the Intermediary undertakes an obligation to provide the Club with the football intermediation services in order to extend the term of the employment agreement with the professional football player [A.], date of birth: […], Portuguese citizen (hereinafter – the Player) so he could perform for the Club in the Russian and international football championships.*
>
> *1.2 The Intermediary shall exercise all actions which are necessary to organize and ensure no later than 20 June 2020 signing by the Player of the additional agreement to the employment agreement with the Club dated 27 August 2019 on the extension of the term of the employment agreement till 31 July 2020.*

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

[…]

3.1 For services rendered under the present Contract the Club undertakes to pay to the Intermediary a fixed remuneration in the amount of 255 582 (two hundred fifty-five thousand five hundred eighty-two) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after the signing by the Player of the additional agreement to the employment agreement with the Club dated 27 August 2019 on the extension of the term of the above-mentioned employment agreement till 31 July 2020.

3.2 In case the FC "LOKOMOTIV" as a result of 2019/2020 sporting season will qualify for participation in a group stage of the UEFA Champions League, the Club undertakes to pay the Intermediary additional remuneration in the amount of 300 000 (three hundred thousand) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after approval of the results of Russian Championship between the clubs of the Tinkoff Russian Premier Liga (TINKOFF RPL) of the 2019/2020 sporting season, confirming the right participate of the FC "LOKOMOTIV" in the group stage of the UEFA Champions League.

3.3 In case the FC "LOKOMOTIV" as a result of 2019/2020 sporting season will qualify for participation in a group stage of the UEFA Europa League, the Club undertakes to pay the Intermediary additional remuneration in the amount of 150 000 (one hundred fifty thousand) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after approval of the results of Russian Championship between the clubs of the Tinkoff Russian Premier Liga (TINKOFF RPL) of the 2019/2020 sporting season, confirming the right participate of the FC "LOKOMOTIV" in the group stage of the UEFA Europa League.

3.4 The remuneration shall be paid by the Club to the Intermediary in rubles at the official rate of the Russian Central bank (Bank of Russia) at the date of the payment by bank transfer to the Intermediary's bank account (via bank transfer) indicated in this Contract. The Club's obligation on paying the remuneration shall be considered fulfilled on the date when the money is charged from the Club's bank account.

3.5 The remuneration shall not be paid to the Intermediary by any third party (third person). Payment of the remuneration shall be exercised exclusively by the Club.

3.6 In any case the maximal amount of the remuneration under this Contract shall not exceed 555 582 (five hundred fifty-five thousand five hundred eighty-two) euros.

The said amount of the remuneration (remunerations) shall be final and complete and shall include all the costs and expenses of the Intermediary and shall not be subject to revision.

3.7 The Parties hereby agreed that the remuneration under this Contract is a market price, fair and proportionate to the cost of the professional intermediation services.

[…]

6.1 This Contract shall be valid from "1" June 2020 till "21" June 2020 inclusively and the Contract with regard to the outstanding (non-fulfiled) financial obligations shall be valid till its full performance.

[…]

6.5 The Parties shall prepare and agree upon Services Acceptance Act within seven calendar days upon completion of the present Contract.

The Intermediary shall send to the Club originals of the signed Act. The Club shall approve and sign the received Act within seven calendar days upon its receipt or the Club might send to the Intermediary it's reasoned objections in written within the same period. In the absence of any response from the Club the Act shall be considered as agreed and approved by the Club.

[…]

7.2 In case the Parties could not amicably settle a dispute, any dispute, controversy or claim, arising from or in connection with this Contract, also in regards to its performance and (or) violation, shall be submitted to the FUR Dispute Resolution Chamber as the first instance

All Decisions of the FUR Dispute Resolution Chamber may be appealed to the FUR Committee on the Status of Players.

All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation.

7.3 If after conclusion of this Contract the FUR's jurisdictional bodies would lose their jurisdiction over the disputes between the Clubs and the football Intermediaries (sports agents) or for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the fist [sic] *instance.*

[…]*".*

8. However, the positions of Olea and Lokomotiv differ with Olea referring to the fact that it signed the Commission Agreement, returned it to Lokomotiv and performed the services required which resulted in the signature of the Additional Agreement whereas Lokomotiv maintaining that the Commission Agreement was merely a draft which was being discussed between Olea and Lokomotiv but was ultimately never agreed and executed.

B. Proceedings before the FUR Dispute Resolution Chamber

9. On 11 March 2021, following the above, Olea lodged a claim against Lokomotiv before the FUR Dispute Resolution Chamber (the "FUR DRC"), requesting that Lokomotiv be ordered to pay to Olea the commission amount set out in the Commission Agreement in the amount of €555,582, compensation for loss of business reputation in the amount of €277,791 and

reimbursement of procedural fees and legal fees.

10. Lokomotiv disputed Olea's claim and filed a motion to terminate the FUR DRC proceedings, stating that the FUR DRC did not have jurisdiction to determine the dispute given that the Commission Agreement had not been registered with the FUR.

11. On 3 June 2021, the FUR DRC rendered its decision (the "FUR DRC Decision"), with the following conclusion and operative part:

"The Chamber is critical of those Applicant's argument and considers that based on systematic interpretation of above-mentioned provisions of the FUR Regulations on dispute resolution, the FUR Regulations on the Status and Transfer of Players and the FUR Regulations on working with intermediaries par. 6 art. 11 of the FUR Regulations on working with intermediaries provides mandatory provision stating that contracts with Intermediaries, which are not duly registered, shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR jurisdictional bodies.

As a result, the Chamber accepts the Respondent's position and concludes that the Chamber has no competence to examine and resolve this dispute between the Applicant and the Club.

Pursuant to subparagraph "a" paragraph 2 article 49 of the Regulations on dispute resolution the Chamber terminates the proceeding on the materials in the event if the case shall not be examined and resolved by the Chamber.

On the basis of the above and following the Chapter 1 "Basic Provisions" of Section I, articles 2, 3, 18, 49, 50, 51, 52 of the FUR Regulations on dispute resolution, article 1 of the FUR Regulations on working with intermediaries the Dispute Resolution Chamber

RULED:

1. To terminate proceedings under the case No. 041-21 on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC" "Lokomotiv" on the recovery of the debt under the intermediation contract and other payments in accordance with subparagraph "a" paragraph 2 article 49 of the FUR Regulations on dispute resolution.

2. To oblige the OOO "OLEA SPORTS CAPITAL" to pay the FUR a due fee for consideration of the case by the Chamber in the amount of 15 000 (fifteen thousand) rubles within 30 (thirty) days from the entry into force of this decision in accordance with article 36 of the FUR Regulations on dispute resolution.

3. This Ruling shall enter into force according to the procedure established by article 55 of the FUR Regulations on dispute resolution.

This Ruling may be appealed in accordance with the FUR Regulations on dispute resolution" (emphasis in original).

C. Proceedings before the FUR Committee on the Status of Players

12. On 18 June 2021, following the above, Olea filed an appeal against the FUR DRC Decision with the FUR Committee on the Status of Players (the "FUR PSC") requesting that the FUR DRC Decision be set aside, and the FUR PSC consider the case on its merits and issue a replacement decision.

13. Lokomotiv maintained its position in disputing Olea's claim, on the same jurisdictional grounds.

14. On 16 July 2021, the FUR PSC rendered its decision (the "FUR PSC Decision" or the "Appealed Decision"), with the operative part:

*"**DECIDED:***

1. To reject in satisfaction of the appeal of the OOO "OLEA SPORTS CAPITAL" on the ruling of the FUR Dispute Resolution Chamber No. 041-21 dated June 3, 2021 (on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC "LOKOMOTIV" Moscow on the recovery of the debt under the contract for intermediation services and other payments).

2. To remain in force the ruling of the FUR Chamber on dispute resolution No. 041-21 dated June 3, 2021, in its entirety (on the claim of the OOO "OLEA SPORTS CAPITAL" to the JSC "FC "LOKOMOTIV" Moscow on the recovery of the debt under the contract for intermediation services and other payments).

3. To oblige the OOO "OLEA SPORTS CAPITAL" to pay the FUR the due fee for consideration of the case by the Committee in the amount of 25 000 (twenty-five thousand) rubles within 30 (thirty) days from the entry in force of this decision in accordance with article 36 of the FUR Regulations on dispute resolution.

This Decision shall enter in force from the moment of its adoption.

In accordance with the par. 2 art. 58 of the FUR Regulations on dispute resolution decisions of the Committee on the Status of Players may be appealed only in the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 (twenty-one) calendar days from the moment of receipt of the final version of the decision by the parties" (emphasis in original).

15. On 4 August 2021, the grounds of the Appealed Decision were issued which stated, inter alia, the FUR PSC's conclusion that:

"We shall notice that violation of the requirement to register contract with intermediary did not grant both parties with the right for consideration of the dispute in the FUR's jurisdiction, but did not deprive of their right for access to natural justice and fair trial in the arbitrational system of the Russian Federation where the question whether the contract for intermediary services concluded would be considered.

[…]

The Committee agrees with the position of the Chamber that based on systematic interpretation of the above-

mentioned provisions of the FUR Regulations on dispute resolution, the FUR Regulations on the Status of Players and the FUR Regulations on working with intermediaries, the par. 6 art. 11 of the FUR Regulations on working with intermediaries has the mandatory provision that contracts with intermediaries which are not registered in accordance with the established procedure shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR's jurisdictional bodies.

Therefore, the Committee agrees with the Respondent's position and the Chamber's position that this dispute is not within the competence of the FUR Chamber.

On the basis of the above, the appeal of the Intermediary on the ruling of the Chamber No. 041-21 dated June 3, 2021, shall be left without consideration".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 25 August 2021, the Appellant lodged an appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code"). A separate appeal was filed by the Appellant against another decision rendered by the FUR PSC, involving the same Parties, but relating to a different transaction (CAS 2021/A/8252).

17. On 6 September 2021, the Appellant stated that the present procedure should not be consolidated with the procedure CAS 2021/A/8252, and also should not be referred to the same Panel or Sole Arbitrator pursuant to Article R50 of the CAS Code.

18. On 6 September 2021, the First Respondent requested that the matter be referred to a three-person panel rather than a Sole Arbitrator and also objected to submitting the two procedures to the same Panel or Sole Arbitrator.

19. On 16 September 2021, the First Respondent confirmed that it did not intend to pay its share of the costs.

20. On 20 September 2021, after having been granted an extension further to Article R32 of the CAS Code, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

21. On 21 September 2021, the First Respondent requested that the deadline for it to file its Answer be set aside and a new deadline set once the Appellant had paid the full advance of costs pursuant to Article R55(3) of the CAS Code.

22. On 21 September 2021, the CAS Court Office rejected the First Respondent's request for a new deadline to be set to file its Answer until the Appellant had paid the full advance of costs because Article R55(3) only provides for the deadline to be deferred until such time as the Appellant has paid its share of the advance of costs, not the full amount. Accordingly, the original deadline was set aside and would be reissued once the Appellant had paid its share of the advance of costs. It was also confirmed that the Deputy President of the CAS Appeals Arbitration Division had decided to refer the case to a Sole Arbitrator and also appoint the same Sole Arbitrator to hear both cases relating to the same Parties.

23. On 7 October 2021, the CAS Court Office confirmed that the Appellant had paid its share of the advance of costs and therefore issued a new deadline for the First Respondent to file its Answer. Furthermore, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

    Sole Arbitrator: Mr Edward Canty, Solicitor in Manchester, United Kingdom.

24. On 13 October 2021, the CAS Court Office confirmed that the Second Respondent had failed to file its Answer within the issued deadline, or any communication from the Second Respondent in relation to the same, and regardless of this that the arbitration would proceed, and an award issued in accordance with Article R55 of the CAS Code.

25. On 27 October 2021, following a request from the First Respondent for an extension of time to file its Answer, the CAS Court Office confirmed such extension based on the Appellant's agreement and lack of response from the Second Respondent.

26. On 12 November 2021, the First Respondent filed its Answer pursuant to Article R55 of the CAS Code.

27. On 15 November 2021, the CAS Court Office invited the Parties to indicate their preference for a hearing to be held or for the matter to be determined based on the written submissions filed.

28. On 22 November 2021, the Appellant indicated it would prefer to have a hearing.

29. Also on 22 November 2021, the First Respondent indicated that it was content to leave the decision to the Sole Arbitrator as to whether or not to hold a hearing.

30. On 30 November 2021, the CAS Court Office wrote to the Parties to confirm the Sole Arbitrator's decision, pursuant to Articles R44.2 and R57 of the CAS Code, to hold a hearing by video conference.

31. On 6 December 2021, after consulting the Parties, the CAS Court Office fixed the date of the hearing by video conference as 9 February 2022.

32. On 10 January 2022 and 12 January 2022 respectively, the Appellant and the First Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office whilst the Second Respondent failed to return a signed copy of the Order of Procedure despite being granted an extension of time to do so, nor did it indicate any intention to attend the hearing.

33. On 17 January 2022, the Appellant provided details of the interpreter who would attend the hearing and also indicated that it was unable to secure the attendance of some witnesses so would have to prescind their oral testimonies.

34. On 20 January 2022, the First Respondent objected to the selected interpreter on the basis

that she was not independent as they believed that she had acted for the First Respondent as legal counsel during the period that the dispute arose and therefore asked for an alternative interpreter to be nominated.

35. On 25 January 2022, the Appellant objected to the allegation that their nominated interpreter was not independent or impartial but agreed to nominate an alternative interpreter in the interests of goodwill.

36. On 9 February 2022, a hearing was held by video conference. At the outset of the hearing, those Parties in attendance confirmed they did not have any objection to the constitution and composition of the arbitral tribunal.

37. In addition to the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing:

a. For the Appellant:

1) Mr Luis Cassiano Neves, Counsel

2) Mr Antonio Rigozzi, Counsel

3) Mrs Matilde Costa Dias, Counsel

4) Mr Adilia Emelkhanova, Counsel

5) Mr Nabil Merabtene, Executive Director of the Appellant

6) Mr Diogo Cruz, Portuguese representative of the Appellant

7) Mr Ivan Marchenkov, legal representative of the Appellant at first instance

8) Ms Diana Dzhalalova, personal assistant of Mr Merabtene

9) Mrs Aleksandra Aleksenko, interpreter

b. For the First Respondent:

1) Mr Mikhail Prokopets, Counsel

2) Mr Ilya Chicherov, Counsel

3) Mr Yury Yakhno, Counsel

c. For the Second Respondent:

1) No attendees

38. Mr Merabtene, Mr Cruz, Mr Marchenkov and Ms Dzhalalova were heard as witnesses. They

gave their testimony after being duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties in attendance and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses.

39. At the outset of the hearing, the Parties in attendance confirmed they had no objections to the constitution of the Panel.

40. The Parties in attendance had full opportunity to present their case, submit their arguments and answer the questions posed by the other Party in attendance and the Sole Arbitrator.

41. Before the hearing was concluded, the Parties in attendance expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard and to have been treated equally and fairly in these arbitration proceedings had been respected.

42. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

43. The following summaries of the submissions of the Parties is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submission or evidence in the following summaries.

44. The Appellant's submissions, in essence, may be summarized as follows:

- There was a valid agreement in place between the Appellant and the First Respondent which confirmed the services performed by the Appellant and the commission due for such performance, however the First Respondent has acted in bad faith and sought to avoid its contractual obligations to the Appellant.

- The Appellant played a crucial role in facilitating the temporary transfer of the Player from Inter to the First Respondent in August 2019, supported by copies of the communication between representatives of the Appellant and First Respondent, including the negotiation of the relevant agreements.

- The First Respondent then approached the Appellant in early June 2020 to enlist its assistance in negotiating an extension of the Playing Contract to allow the Player to continue to play for the First Respondent for European and international competitions and agreed upon the commission to be paid for such services. This agreement was reached at the start of June 2020, as evidenced by the date inserted into the Commission Agreement by the First Respondent (1 June 2020), even though it was only sent to the

Appellant on 22 June 2020; it was intended to be backdated to reflect that the services had already been provided by 22 June 2020.

- The Appellant signed and returned the Commission Agreement to the First Respondent however the First Respondent never counter signed it; notwithstanding, the intentions of the parties was clear, and the Appellant fully performed the services required of it, before the Commission Agreement was sent by the First Respondent to the Appellant, which served to confirm the agreement reached between the parties.

- This is further supported by the meeting between the Appellant and the First Respondent on 30 June 2020, in which the First Respondent accepted that it owed the commission to the Appellant, with the Appellant providing a transcript of an extract of the meeting. The First Respondent also acknowledged the role played by the Appellant in securing the Player in a media interview published on 23 June 2020.

- However, in bad faith, the First Respondent did not counter sign the Commission Agreement meaning the Appellant was unable to register it with the FUR.

- The Appellant rejects the arguments of the First Respondent that the lack of counter signature and the failure to register the Commission Agreement with the FUR, means that the Commission Agreement is not valid and there was no agreement reached between the parties for the provision of services in relation to the Additional Agreement and the payment of commission.

- The fact that the parties agreed the terms verbally, and that the First Respondent prepared the Commission Agreement reflecting those terms which it sent to the Appellant and the Appellant accepted it, means a valid agreement was reached between the parties, supported by both the Civil Code of the Russian Federation and CAS jurisprudence.

- The lack of counter signature does not affect the validity of the Commission Agreement as formality should be overlooked in favour of a consideration of the intentions and actions of the parties, a position supported by CAS jurisprudence.

- The doctrines of *estoppel* and *venire contra factum proprium* are relevant and relied upon by the Appellant in support of its position; it arises where one party makes a statement that induces the other party to rely on that statement, the party making the statement is then prevented from changing its position to the detriment of the other party. The party making such statement has created legitimate expectations relied upon by the other party, and it is therefore estopped from changing its position and acting contrary to that original statement.

- In the case at hand, the First Respondent created legitimate expectations in the Appellant by agreeing the essential elements of the services required and commission to be paid, and then confirming the same by drafting the Commission Agreement and publicly recognizing the role played by the Appellant. Therefore, by refusing to sign the Commission Agreement the First Respondent breached the principle of *venire contra factum*

proprium and is therefore estopped from arguing that the Commission Agreement is invalid due to the lack of counter signature.

- Furthermore, the fact that the Commission Agreement was not registered with the FUR does not affect its validity. As supported by CAS jurisprudence, the registration of a contract is purely an administrative task which does not impact upon the validity of the contract. The validity of a contract cannot be conditional upon a mere formality, such as the registration of a contract with an entity.

- The Appellant notes that the FUR Regulations on working with intermediaries (the "FUR Intermediaries Regulations") (2018 edition) does not establish any direct consequence on the validity of a contractual relationship which does not comply with the requirements of the FUR Intermediaries Regulations. Therefore, a contract which is not registered with the FUR does not annul the contractual relationship. It should also be recalled that the only reason why the Commission Agreement was not registered with the FUR was due to the First Respondent's inaction and dilatory tactics in seeking to avoid counter signing the Commission Agreement, so the First Respondent should not be able to benefit from its own bad faith.

- The commission payments were agreed between the Appellant and the First Respondent, as detailed in the Commission Agreement drafted by the First Respondent, and the Appellant is entitled to the fixed fee of €255,582 (Article 3.1 Commission Agreement) as well as the additional fee of €300,000 (Article 3.2 Commission Agreement) which was triggered by the First Respondent qualifying for the UEFA Champions League in season 2020/21.

- In addition, as supported by the Civil Code of the Russian Federation, the Appellant is also entitled to interest at a rate *"defined by the discount rate of the bank interest"* (Article 395 paragraph 1 of the Civil Code of the Russian Federation) which at the date of the filing of the Appeal Brief was 6.75%, equating to 2,688,263.13 Russian Rubles. The Appellant also claims the arbitration costs of 60,000 Russian Rubles and legal fees and translator fees at the first instance, amounting to 5,470,714 Russian Rubles.

- Finally, the FUR Intermediaries Regulations left the Appellant in an insurmountable legal conundrum: the Appellant does not hold a fully signed Commission Agreement, through no fault of its own, which means it is prevented from registering the Commission Agreement with the FUR, the FUR judicial bodies reject the Appellant's claim due to a lack of jurisdiction (based on the lack of registration of the Commission Agreement), but then the Appellant is prevented from taking its complaint to the state courts as it would be in breach of Article 46 of the FUR Charter (preventing any disputes being taken to state courts given the FUR has *"jurisdiction over internal disputes in football sphere on the national level"*.

- This is a 'Catch 22' situation which has been created by the FUR and exploited by the First Respondent for its own benefit and to the detriment of the Appellant. If unchecked, this would create a situation whereby clubs could routinely evade their legal

responsibilities by simply refusing to counter sign agency agreements, as was the case here. This leads to a clear denial of justice and violation of the Constitution of the Russian Federation.

- The suggestion that the Appellant could seek redress in the national courts, as suggested in the decisions of the FUR judicial bodies, runs contrary to the position taken by FIFA which took disciplinary action against the national federations of Greece, Pakistan, Benin and Nigeria (amongst others) for allowing the involvement of national courts in footballing matters.

- The FUR's position on jurisdiction and the consequential refusal to consider the underlying merits of the Appellant's claim leads to a clear denial of justice for the Appellant which should be corrected using the *de novo* powers which the CAS has under Article R57 of the CAS Code to review the facts and the law and issue a new decision on the merits of the Appellant's claim.

45. Accordingly, the Appellant submitted the following requests for relief:

*"**REQUEST FOR RELIEF***

In the light of the above, OLEA SPORTS CAPITAL respectfully requests this Honorable Court to:

a) *The appeal by Olea Sports Capital is admissible.*

b) *The Decision of the FUR Committee on the Status of Players is to be set aside.*

c) *A new decision shall be issued by this Honorable Court which shall replace in full the Appealed Decision and shall determine, inter alia, that:*

i. ***Football Club Lokomotiv Moscow shall pay the Appellant for the intermediation services provided by the latter regarding the signing of the player's [A.] extension of employment contract, a total amount of €555.582,00*** *(five hundred and fifty-five thousand five hundred and eighty-two euros);*

ii. *Football Club Lokomotiv Moscow shall pay the Appellant* ***the corresponding interests amounting to RUB 2 688 263, 12*** *(two million six hundred eighty-eight thousand two hundred and sixty-three euros and thirteen cents Russian Roubles);*

iii. *Football Club Lokomotiv Moscow* ***shall reimburse the Appellant for all the amounts incurred during the first instance proceedings*** *before the Chamber for Dispute Resolution of RUF and the Committee on the Status of Players of FUR,* ***totaling RUB 60.000 (forty thousand Russian Roubles)****;*

iv. *Football Club Lokomotiv Moscow* ***shall reimburse the Appellant for the contribution towards the legal fees and legal expenses incurred on the aforesaid proceedings, totaling RUB 5.470.714*** *(five million four hundred and seventy seven hundred fourteen Russian Roubles) in accordance with Exhibit 20;*

v. *Football Club Lokomotiv Moscow and the Russian Football Union* ***shall bear the costs of the present arbitration proceedings in its entirety****, as well as a contribution towards the* ***Appellant's legal fees in the amount of €5.000,00*** *(five thousand euros)"* (emphasis in original).

46. The First Respondent's submissions, in essence, may be summarized as follows:

- The scope of the appeal is whether the FUR DRC was correct to decline jurisdiction and not about the validity of an agreement between the Appellant and the First Respondent and the consequences of a party's default under that agreement.

- The exchange of the Commission Agreement was simply part of a negotiation, during June to July 2020, whereby the Appellant and the First Respondent were trying to find an agreement on their potential interaction but those involved in the written and oral negotiations were not empowered to make a binding offer or acceptance in this regard. The parties did not sign the Commission Agreement and therefore it was not registered with the FUR as required by the FUR Intermediaries Regulations.

- On 27 April 2021, the Appellant unexpectedly returned the Commission Agreement, which it had signed, to the First Respondent claiming payment, and then commenced its claim before the FUR DRC on 11 May 2021 when payment was not forthcoming.

- The Commission Agreement cannot be considered valid because it does not satisfy the essential requirements set out in Article 10, paragraph 2, of the FUR Intermediaries Regulations.

- The Appellant's attempts to argue that the Commission Agreement is valid and binding notwithstanding the lack of counter signature is misplaced because the CAS jurisprudence it cited relates to other types of contracts, for instance, employment contracts between clubs and players, as opposed to agency arrangements between two legal entities who are *"professionals of an economic turnover"* and therefore have a higher burden to comply with the applicable regulations (which it seeks to support by reference to alternative CAS jurisprudence).

- The fact that the Commission Agreement did not satisfy the requirements set out in the FUR Intermediaries Regulations is sufficient to render it invalid, and the Appellant should be aware of this as a registered intermediary with the FUR; however, this is not the real (and singular) issue. The issue of validity has no bearing on the question whether the FUR DRC did, or did not, have jurisdiction to decide on the dispute between the Appellant and the First Respondent; the only question is whether the Commission Agreement was registered with the FUR which dictates whether the FUR DRC has jurisdiction, or not.

- Whilst the FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution provide that some disputes may be considered by the FUR jurisdictional bodies, this cannot be interpreted separately to the requirements set out in Article 10, paragraph 2, of the FUR Intermediaries Regulations. In any event, the provisions in the

FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution reference disputes arising out of "contracts concluded" between clubs and agents, and there is no dispute that the Commission Agreement was not concluded, given it must be signed by all parties and lodged with the FUR within 30 days and neither occurred. The FUR Intermediaries Regulations are clear, at Article 11, paragraph 6, that contracts with agents that are not lodged with the FUR *"… are not recognized by the FUR and, in particular, disputes arising therefrom are not subject to resolution in the procedure set forth in Art. 18 of these Regulations"*. According to the principle of *"lex specialis derogate lex generali"* the specific rule set out in Article 11, paragraph 6 of the FUR Intermediaries Regulations should be applied primarily over more general provisions in the FUR Intermediaries Regulations and the FUR Regulations on Dispute Resolution.

- The Appealed Decision relates to the question of jurisdiction of the FUR DRC and therefore any consideration of whether the Commission Agreement is a valid and binding agreement or not is moot. In any event, the Appellant had the option to ask the FUR to recognize and register the Commission Agreement despite lack of counter signature, which if it was not successful, could appeal to the FUR Appeals Committee and then the CAS, in accordance with Article 18, paragraph 3 of the FUR Intermediaries Regulations, but it failed to do so.

- Instead, the Appellant remained passive for a year and did not perform, or try to perform, the services set out in the Commission Agreement and yet then tried to argue the First Respondent was liable to pay the sums set out in the Commission Agreement. In this regard, the First Respondent argues that it is actually the Appellant that should be estopped from pursuing its claim in bad faith based on the principle of *venire contra factum proprium*.

- The First Respondent refers to a recent Swiss Federal Tribunal case which it argues can be applied to suggest that the Appellant is prevented from bringing its appeal to the CAS in terms that it has tried to because the underlying first instance claim was unsuccessful on jurisdictional grounds due to the failure to register the Commission Agreement with the FUR.

- Furthermore, there is no denial of justice for the Appellant because, as referenced in the Appealed Decision, the fact that the FUR DRC did not have jurisdiction would not prevent the Appellant taking its claim to the *"arbitrational system of the Russian Federation where the question whether the contract for intermediary services concluded would be considered"*.

- In conclusion, the validity of the Commission Agreement has no relevance to the question of the FUR DRC's jurisdiction, which it correctly declined due to the non-registration of the Commission Agreement with the FUR. The Appellant's actions invoke the principle of *venire contra factum proprium* and its claim should be disregarded. Finally, the principle of *in claris non fit interpretatio* prevents the CAS from establishing the FUR DRC's jurisdiction and, consequently, from addressing the underlying merits of the Appellant's claims.

47. Accordingly, the First Respondent submitted the following requests for relief:

"FC Lokomotiv Moscow respectfully requests that the CAS:

1. Dismiss the appeal lodged by OLEA Sports Capital LLC.

2. Confirm the decision passed by the FUR Players' Status Committee on July 16, 2021, No. 041-21.

3. Order the Appellant to bear all costs incurred with the present procedure at CAS.

4. Order the Appellant to pay FC Lokomotiv Moscow a contribution towards its legal and other costs, the amount to be determined at the Sole Arbitrator's discretion".

48. The Second Respondent failed to file an Answer and accordingly to make any requests for relief.

V. JURISDICTION

49. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code which states *"[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

50. Article 58(2) of the FUR Regulations on Dispute Resolution provides as follows:

"The decision of the Committee or the Chamber's decision, which was made on the issues specified in subparagraphs "a" – "f" of paragraph 1 of Article 18 of these Rules, may be appealed only to the CAS within 21 (twenty one) days from the receipt by the parties of the decision of the Committee or the Chamber with the full text (in final form)".

51. The Appealed Decision refers to the fact that CAS has jurisdiction to hear an appeal as it provides as follows:

"In accordance with the par. 2 art. 58 of the FUR Regulations on dispute resolution decisions of the Committee on the Status of Players may be appealed only in the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 (twenty-one) calendar days from the moment of receipt of the final version of the decision by the parties".

52. In addition, with reference to Article R47 of the CAS Code, the Commission Agreement provides as follows:

"7.2 In case the Parties could not amicably settle a dispute, any dispute, controversy or claim, arising from or in connection with this Contract, also in regards to its performance and (or) violation, shall be submitted to the FUR Dispute Resolution Chamber as the first instance

All Decisions of the FUR Dispute Resolution Chamber may be appealed to the FUR Committee on the Status of Players.

All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation.

7.3 If after conclusion of this Contract the FUR's jurisdictional bodies would lose their jurisdiction over the disputes between the Clubs and the football Intermediaries (sports agents) or for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the fist [sic] *instance".*

53. The Parties do not dispute the jurisdiction of the CAS and those Parties in attendance at the hearing confirmed it by signing the Order of Procedure.

54. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

55. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. […]".

56. According to Article 58(2) of the FUR Regulations on Dispute Resolution, appeals shall be filed with *"the CAS within 21 (twenty one) days from the receipt by the parties of the decision of the Committee or the Chamber with the full text (in final form)".*

57. The appeal was filed within the deadline of 21 days set by Article 58(2) of the FUR Regulations on Dispute Resolution. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

58. It follows that the appeal is admissible.

VII. APPLICABLE LAW

59. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

60. The Parties are in agreement that the various regulations of the FUR are to be applied to this dispute with Russian law to be applied subsidiarily in case there is a lacuna in the regulations

of the FUR (although the First Respondent claims that there is no such lacuna and therefore Russian law is not to be applied). In addition, the Appellant claims that Swiss law should also be applied.

61. The Sole Arbitrator has considered the Parties' positions in respect of the applicable law and in particular took into account the terms of the Commission Agreement which reads, inter alia, as follows:

"All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation".

62. Based on the fact that there is an agreement between the Parties as to the relevant regulations and the applicability of Russian law, coupled with the above provision in the Commission Agreement, the Sole Arbitrator is satisfied that this position should prevail.

63. It is also noted that the First Respondent maintains that despite the relevance of Russian law, it states that there is no lacuna present in the FUR Regulations which require the application of Russian law. In contrast, the Appellant states that the arbitration law at the seat of the arbitration (*lex arbitri*) is relevant and applicable; since CAS has its seat in Lausanne, Switzerland then Swiss arbitration law applies.

64. It follows, therefore, that the Sole Arbitrator is satisfied that primarily the various regulations of FUR are applicable to the substance of the case, and additionally Russian law, should the need arise to fill a possible gap in the various regulations of FUR. Given that the arbitral tribunal has its seat in Switzerland, Swiss arbitration law governs the arbitral proceedings.

VIII. PRELIMINARY ISSUES

65. The Sole Arbitrator was asked to determine certain preliminary issues at the commencement of the hearing, in particular:

a. The Appellant argued that the First Respondent should be prevented from cross-examining the Appellant's witnesses since the First Respondent had accepted the factual version of events, a submission opposed by the First Respondent;

b. The First Respondent asked that Exhibit 13 to the Appeal Brief ("Transcription of the audio records of the meeting held with the Club") should not be considered because the audio file had not been supplied, a submission opposed by the Appellant; and

c. The First Respondent also asked that Exhibits 20 and 21 to the Appeal Brief ("Proof of the court fees of first instance proceedings before the FUR" and "Proof of the legal fees of first instance proceedings") should not be considered because the Appellant had not provided a translation into the language of the proceedings in accordance with the CAS Code, a submission opposed by the Appellant.

66. Beginning with the application for the Appellant's witnesses to not be cross-examined by the First Respondent, this was objected to by the First Respondent on the basis that it had not accepted the Appellant's version of events.

67. The Sole Arbitrator took into account both the submissions made by the Appellant and First Respondent and also considered the First Respondent's Answer which plainly set forth certain areas of disagreement on the facts, not least the existence, or not, of a concluded agreement between the Parties. On that basis, the Sole Arbitrator ruled that the First Respondent would be entitled to cross-examine the Appellant's witnesses, whilst noting that the Appellant continued to have the right to object to any particular line of cross-examination.

68. With regard to Exhibit 13 to the Appeal Brief, the Sole Arbitrator notes that the First Respondent received the same on or around 20 September 2021 but yet had not raised any issue, whether in its subsequent Answer or at all until the commencement of the hearing. There is a general incumbrance on parties to raise any procedural issues as soon as practicable for due consideration to be given and, if possible and appropriate, remedied if possible. The First Respondent gave no reasons why it was only raising an objection to this exhibit on the basis that an audio file had not been supplied, nor did it assert any evidence to undermine the transcripts (or translations), for instance, witness evidence from a purported attendee of the meeting to dispute the occurrence of the meeting or the accuracy of the transcripts.

69. On that basis, the Sole Arbitrator is satisfied that this objection should be dismissed and Exhibit 13 should remain in the case file. As with all evidence, the Sole Arbitrator will attribute such weight as he deems appropriate to the transcripts in evaluating the evidence.

70. Finally, the Sole Arbitrator has considered the objection to the inclusion of Exhibit 20 and 21 to the Appeal Brief on the basis of lack of translation and upon review of the same, notes that there is no translation provided for Exhibit 20 and there is a partial translation of certain documents provided in Exhibit 21 but a lack of translation for the majority.

71. The Sole Arbitrator notes the provisions of R29 of the CAS Code which specifies that a language for the proceedings, from one of the CAS working languages, is selected and that the proceedings will be conducted in that language, including the requirement for translators and translations to be provided where necessary.

72. Furthermore, the Sole Arbitrator notes in the letter from the CAS Court Office, dated 1 September 2021, which acknowledged receipt of the Statement of Appeal stated as follows:

"… all written submissions shall be filed in English and all exhibits submitted in any other language should be accompanied by a translation into English".

73. In addition, the Order of Procedure, signed by both the Appellant and First Respondent, stated as follows:

"In accordance with Article R29 of the Code, the language of this arbitration is English. Documents written in any language other than English shall only be submitted accompanied by a translation. If such documents

are not translated into English, the Sole Arbitrator may decline to consider them".

74. Although it is noted that the First Respondent's objection could have been made earlier, following the conclusion reached with regard to Exhibit 13 above, the Sole Arbitrator is content to draw a distinction here because there is an express provision on the Parties to provide translations of any documents it wishes to put forward in evidence in the CAS Rules and the Appellant had (in the main) failed to do so in respect of the documents contained at Exhibits 20 and 21. The distinction with Exhibit 13 can be drawn on the basis that the objection raised by the First Respondent is not necessarily one which the Appellant could necessarily have expected, and certainly not with the lack of diligence shown by the First Respondent, as opposed to Exhibits 20 and 21 for which the Appellant should have been aware of the requirements of the CAS Code for translations (and for which it did indeed provide many translations of other documents it sought to rely upon).

75. Therefore, the Sole Arbitrator agrees with the objection raised by the First Respondent and the documents filed in Russian language in Exhibits 20 and 21 will be disregarded, apart from those documents contained in Exhibit 21 which were actually produced in dual language (Russian and English).

IX. MERITS

76. The main issues to be determined are:

(i) What is the burden of proof and the standard of proof applicable to the present matter?

(ii) Was the FUR DRC correct to decline jurisdiction?

(iii) Did the Parties conclude a contract?

(iv) What are the consequences that follow?

A. What is the burden of proof and standard of proof applicable to the present matter?

77. Before assessing the main issues of the present dispute, the Sole Arbitrator deems it necessary to first establish the burden of proof and the standard of proof applicable to the present matter.

78. Firstly, the Sole Arbitrator notes that the Parties did not address the question of the applicable burden of proof or standard of proof however these are still matters which are appropriate for the Sole Arbitrator to rule upon absent any express submissions by the Parties.

79. The Sole Arbitrator further notes that neither the Appealed Decision nor the FUR DRC Decision provides any guidance as to the burden of proof or standard of proof it applied when determining the underlying matter.

80. There is, however, some relevant material within the FUR Regulations on Dispute Resolution which is of assistance and is considered further below.

81. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730).

82. This concept was further explained in CAS 2011/A/2384 & 2386 as follows:

"Under Swiss law, the 'burden of proof' is regulated by Art. 8 of the Swiss Civil Code (the "CC"), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven … Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal".

83. In CAS 2003/A/506, it was held:

"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".

84. This position is further supported by the provisions of Article 30 of the FUR Regulations on Dispute Resolution which, *inter alia*, states:

"1. Each party shall be obliged to prove the circumstances on which it refers as grounds for its claims and objections.

2. A Chamber or Committee determines which circumstances are relevant to the case, which party has to prove them, brings the circumstances to discussion, even if the parties have not invoked any of them.

[…]

5. The circumstances recognized by the parties as a result of the agreement between them shall be accepted by the Chamber as facts not requiring further proof. The agreement of the parties on the circumstances shall be certified by their written statements and may also be contained in other procedural documents sent by the parties (including a response to the statement, written explanations, etc.).A party's admission of the circumstances on which the other party bases its claims or objections shall release the other party from the need to prove such circumstances. The circumstances relied upon by a party in support of its claims or objections shall be deemed recognized by the other party, unless they are directly challenged by it or the disagreement with such circumstances arises from other evidence justifying the submitted objections to the substance of the claims".

85. It follows therefore that each Party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

86. With regard to the standard of proof, whilst this is not expressly addressed in the FUR Regulations on Dispute Resolution, CAS jurisprudence has consistently applied the standard of "comfortable satisfaction". It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (see CAS 2010/A/2172; CAS 2009/A/1920).

87. This is supported by and consistent with the Swiss Civil Code as set out in CAS 2014/A/3562:

"The Panel observes that according to Swiss Civil procedure law the standard of proof to be applied is in line with such jurisdiction (see STAEHELIN / STAEHELIN / GROLIMUND, Zivilprozessrecht, § 18, N 38) and fully adheres to the above-mentioned reasoning in CAS 2011/A/2426 and will therefore also give such meaning to the applicable standard of "personal conviction"/ "comfortable satisfaction"".

88. Based on the foregoing, the Sole Arbitrator is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

89. Finally, in accordance with Article R57 of the CAS Code, *"[t]he Panel has full power to review the facts and the law"*, which means that the CAS appellate arbitration procedure provides for a *de novo* review of the merits of the case. Accordingly, as is well-established in CAS jurisprudence, a Panel is not limited to deciding if the Appealed Decision is correct or not but rather its function is to make an independent determination as to the merits.

B. Was the FUR DRC correct to decline jurisdiction?

a. Did the Commission Agreement fulfil the requirements set out in the FUR Intermediaries Regulations?

90. The respective positions of the Parties, set out in summary above, are clear. The Appellant maintains that there is a valid agreement in place between the Appellant and the First Respondent however the First Respondent has exploited its refusal to countersign the Commission Agreement by seeking to rely on the lack of jurisdiction of the FUR judicial bodies and further relying on provisions in the FUR regulations which prevent the Appellant from seeking resolution of the dispute under any other forum. In contrast, the First Respondent maintains that there is no valid agreement between the Appellant and the First Respondent (and therefore the Appellant's claim fails on the merits) and the FUR judicial bodies were correct to decline jurisdiction on this basis.

91. The Sole Arbitrator notes that the Appealed Decision confirms the finding in the FUR DRC Decision that:

> *"… the mandatory provision that contracts with intermediaries which are not registered in accordance with the established procedure shall not be recognized by the FUR and, therefore, disputes under such contracts shall not be resolved in the FUR's jurisdictional bodies.*
>
> *Therefore, the Committee agrees with the Respondent's position and the Chamber's position that this dispute is not within the competence of the FUR Chamber.*
>
> *On the basis of the above, the appeal of the Intermediary on the ruling of the Chamber No. 041-21 dated June 3, 2021, shall be left without consideration".*

92. Article 10.2 of the FUR Intermediaries Regulations[2] states, *inter alia*, as follows:

> *"The contract with the Intermediary must indicate:*
>
> […]
>
> *o) signatures of the Parties".*

93. Article 11 of the FUR Intermediaries Regulations states, *inter alia*, as follows:

> *"1. Within 30 (thirty) calendar days after signing of the respective contract the Intermediary shall register the contract by submitting to the Commission the original of the concluded contract in 3 (three) copies with all annexes and additional agreements to the contract (if any).*

[2] The Sole Arbitrator notes that both the Appellant and First Respondent supplied either part or full translations of the FUR Intermediaries Regulations which had minor stylistic differences in language, however the relevant sections were cross-referred to ensure there was no material substantive differences and the meaning remained consistent.

[…]

4. Contracts are not accepted for registration in the following cases:

a) failure to comply with the requirements for the contract established by these Regulations, including the requirements for the content and execution of the contract;

[…]

6. The contracts with an Intermediary which are not registered within the deadline set forth in these Regulations are not recognized by the FUR and, in particular, disputes arising therefrom are not subject to resolution in the procedure set forth in Art.18 of these Regulations, and the Intermediary may be sanctioned in accordance with these Regulations".

94. Article 18 of the FUR Intermediaries Regulations states, inter alia, as follows:

"1. All disputes, disagreements or claims arising from agreements concluded on the basis of these Regulations between Football Players / Clubs / Coaches, on the one hand, and Intermediaries (as of the date of the conclusion of the relevant agreement), on the other hand, are subject to resolution by the jurisdictional bodies of the FUR (FUR Dispute Resolution Chamber FUR Players' Status Committee) as a mandatory pre-trial dispute resolution procedure according to the procedures provided for by the FUR Regulations on Dispute Resolution.

[…]

3. Any decisions of the Commission, including the refusal to issue an Intermediary Certificate, the suspension or revocation of the Intermediary Certificate, the application of sports sanctions, the refusal to register contracts with the Intermediary, may be appealed to the FUR Appeal Committee within 7 (seven) working days from the date of receipt of the decision. The corresponding decision of the FUR Appeals Committee can be appealed to the Court of Arbitration for Sport (Lausanne) in accordance with the FUR Disciplinary Regulations".

95. It is common ground between the Appellant and the First Respondent that the First Respondent did not sign the Commission Agreement and nor was it registered with the FUR in accordance with the FUR Intermediaries Regulations.

96. Accordingly, the Sole Arbitrator is satisfied, to his comfortable satisfaction, that the Appealed Decision follows the line of reasoning set out in the referenced sections of the FUR Intermediaries Regulations and that, in principle, this should have led the FUR PSC to conclude that it did not have jurisdiction. In the present case, however, the Appellant argued that the First Respondent did in fact conclude a contract, namely the Commission Agreement, notwithstanding that it was not registered with the FUR. The Sole Arbitrator will now turn to this second argument.

b. Did the Parties conclude a contract?

97. It is important to highlight the distinction that a failure to adhere to a regulatory requirement

does not, of itself, render a contract not legally effective.

98. The position of these Parties is clear; the Appellant maintains the Commission Agreement is legally enforceable based on the fact that it records the agreement between the two Parties after the provision of the services, it was drafted by and sent by the First Respondent, and the Appellant gave its approval by signing and returning the same. It maintains that the First Respondent did everything it could to avoid signing the agreement to seek to escape its liability to pay the agreed fees for the services and by doing so, meant that the Appellant was unable to register the Commission Agreement with the FUR. In contrast, the First Respondent maintains that the Commission Agreement was simply a draft which was for discussion and negotiation, still contained some incomplete provisions, and the two Parties ultimately never came to an agreement nor concluded a contract and therefore the Commission Agreement was not legally binding.

99. The Sole Arbitrator has carefully considered the two Parties' respective positions. Firstly, it is noted that the essence of the services which the First Respondent required of the Appellant where as follows:

"1.1 Under this Contract the Club engages and the Intermediary undertakes an obligation to provide the Club with the football intermediation services in order to extend the term of the employment agreement with the professional football player [A.], date of birth: […], Portuguese citizen (hereinafter – the Player) so he could perform for the Club in the Russian and international football championships".

100. It is further noted that the Commission Agreement makes the following specific provision:

"2.2 The Intermediary shall:

2.2.1 no later than 20 June 2020 ensure signing by the Player of the additional agreement to the employment agreement with the Club dated 27 August 2019 on the extension of the term of the employment agreement till 31 July 2020;"

101. It is agreed between the Appellant and the First Respondent that the Player signed the Additional Agreement for an extended period to the Playing Contract from 19 June 2020 to 31 July 2020. Accordingly, the services required of the Appellant must have been concluded on or before 19 June 2020 by virtue of the execution of the Additional Agreement.

102. The Commission Agreement also makes reference to the requirement for a "Services Acceptance Act" to be prepared as follows:

"6.5 The Parties shall prepare and agree upon Services Acceptance Act within seven calendar days upon completion of the present Contract.

The Intermediary shall send to the Club originals of the signed Act. The Club shall approve and sign the received Act within seven calendar days upon its receipt or the Club might send to the Intermediary it's reasoned objections in written within the same period. In the absence of any response from the Club the Act shall be considered as agreed and approved by the Club".

103. It is noted that the Commission Agreement and a copy of the First Services Acceptance Act were sent by the First Respondent's Financial Director to the Appellant on 22 June 2020 by email. The First Services Acceptance Act concludes that the Appellant has carried out the services required by the Commission Agreement as follows:

"1. The Intermediary has dully and in full rendered to the Club the football intermediation services as a result of which the Club signed with the professional football player [A.], date of birth: […], Portuguese citizen (hereinafter – the Player) the additional agreement to the employment agreement dated 27 August 2019 on the extension of the term of the Contract until 31.07.2020.

2. The Club has accepted the services rendered by the Intermediary and does not have any claims against him.

3. The Intermediary does not have any claims against the Club.

4. In accordance with article 3 of the Contract the Club undertakes to pay to the Intermediary the fixed remuneration in the amount of 255 582 (two hundred fifty-five thousand five hundred eighty-two) euros VAT???".

104. The evidence put forward at the hearing, by way of oral testimony provided by Mr Nabil Merabtene, Executive Director of the Appellant, was that he returned a signed copy of the Commission Agreement by post shortly after receipt, in late June 2020, and also gave a copy to the First Respondent's President, Mr Vasiliy Kiknadze, at one of the First Respondent's next matches because he said he had not received a signed copy. Mr Merabtene also stated that he signed and returned a copy of the First Services Acceptance Act by post and also gave a copy by hand to Mr Kiknadze at their next match on 30 June 2020 and the Club then produced a Second Services Acceptance Act which he also signed and returned to Mr Kiknadze by hand later in July 2020. He maintained that the only response given by Mr Kiknadze was to provide assurances that the payment due would be made in 15 days. This is supported, in part, by transcripts of a meeting between Mr Merabtene and Mr Kiknadze, dated 30 June 2020, wherein there were discussions about the need for payment to be made to the Appellant.

105. The First Respondent, in questioning Mr Merabtene, asked if proof of postage could be provided, about which Mr Merabtene was unsure but unable to produce immediately.

106. The Sole Arbitrator considered the evidence supplied by the two Parties as regards this crucial aspect and noted that the Appellant had put forward oral testimony supported by some documentary evidence; in contrast, the First Respondent had not produced any evidence to undermine the Appellant's position (apart from questioning postal evidence). It is noted that it was open to it to put forward witness evidence to seek to undermine the evidence put forward by the Appellant but had elected not to do so. Further, the First Respondent did not provide any evidence that it had objected to receiving either the signed Commission Agreement or the Services Acceptance Acts, for instance by asserting (as it now does) that the two Parties were simply at the negotiation stage and therefore rejecting the signed copies. It would be expected that this would be the normal reaction to receiving a signed copy of a document that it did not consider reflected the agreed position of the two Parties.

107. Furthermore, the Appellant had submitted in evidence copies of the First and Second Services Acts, both signed by the Appellant's representative and dated by hand 30 June 2020 and 27 July 2020 respectively. These were submitted in evidence exhibited to the correspondence sent by the Appellant to the First Respondent dated 10 August 2021. Again, no response from the First Respondent was provided or referred to which suggested that the provision of these signed documents was rejected.

108. The Second Services Act provided reads, *inter alia*, as follows:

> *"1. The Intermediary has dully and in full rendered to the Club the football intermediation services as a result of which the Club signed with the professional football player [A.], date of birth: […], Portuguese citizen (hereinafter – the Player) the additional agreement to the employment agreement dated 27 August 2019 on the extension of the term of the Contract until 31.07.2020.*
>
> *2. The Club has accepted the services rendered by the Intermediary and does not have any claims against him.*
>
> *3. The Intermediary does not have any claims against the Club.*
>
> *4. In accordance with the paragraph 3.3 article 3 of the Contract the Club undertakes to pay to the Intermediary the additional remuneration in the amount of 300 000 (three hundred thousand) euros".*

109. As noted, apart from reflecting the additional amount due based on the First Respondent's qualification for the UEFA Champions League group stages in the following season, the reference to *"VAT???"* had been removed, suggesting this issue had fallen away. The date of the signed copy supplied by the Appellant, 27 July 2020, is chronologically consistent given the final match of the Russian Premier League season took place on 22 July 2020, in which such qualification was confirmed.

110. Accordingly, the Sole Arbitrator considers the existence of the Second Services Act to be important evidence, showing as it does that this was produced more than a month after the Commission Agreement and First Services Act, with the timing consistent with qualification having been secured by the First Respondent for the UEFA Champions League group stages. The removal of the reference to VAT, which was the only aspect the First Respondent could allude to as being the reason why the Commission Agreement remained 'under negotiation', is also telling.

111. Balancing the evidence supplied by the Appellant, in terms of both documents and witness testimony, signed copies of all three documents were provided to the First Respondent at the time, sometimes multiple copies, including during meetings with the First Respondent (for which transcript evidence was supplied) compared with the First Respondent who failed to produce evidence to undermine the same, whether in documentary form or witness testimony, it is clear that the Appellant has taken steps to discharge its evidential burden.

112. In addition, it is noted that the Services Acceptance Acts specifically detail, as set out above, that the First Respondent has 7 days to object to the terms of the same upon receipt from the Appellant but it provided no evidence of any such objection, save for its position that it never

received a signed copy (although, as stated, it was in fact prepared by the First Respondent itself, which further undermines its position). As noted, the position in such circumstances is as follows:

"In the absence of any response from the Club the Act shall be considered as agreed and approved by the Club".

113. This raises the question as to why the Club even provided a copy of the First Services Acceptance Act to the Appellant, when sending the Commission Agreement, if it genuinely believed that they were simply starting negotiations regarding the terms of the latter. In that regard, no evidence was supplied as to either Party seeking to negotiate any of the terms, which is perhaps unsurprising given that it was prepared and sent by the First Respondent to the Appellant on 20 June 2020, the day following the conclusion of the services required, namely the Player signing the Additional Agreement. It follows that the existence of the Second Services Act is all the more surprising given the position the First Respondent now adopts.

114. Therefore, the Sole Arbitrator is satisfied to his comfortable satisfaction that the Appellant did return signed copies of the Commission Agreement and the Services Acceptance Acts and moreover that the First Respondent took no steps to object to the receipt of the same, thereby maintaining that there was no agreement between the two Parties as to the provision of services and requirement for the payment of the amount set out in the Commission Agreement.

115. The Sole Arbitrator is also satisfied to his comfortable satisfaction that the First Respondent did seek to avoid countersigning the Commission Agreement and the Services Acceptance Acts in the hope that in so doing, it would frustrate the Appellant's attempts to recover the commission payments set out in the Commission Agreement.

116. It is noted that the FUR Intermediaries Regulations sets out the following within Article 2 General Provisions:

"4. Footballers, Coaches, Clubs and Intermediaries undertake to act in good faith and reasonably in exercising their rights and obligations.

Instructions given by Footballers, Coaches and/or Clubs to Intermediaries to carry out their actions must be lawful, enforceable and specific.

No rights may be exercised solely with the intention of causing harm to another person, bypassing the regulations with an unlawful purpose, or otherwise in bad faith".

117. In that regard, having found that the First Respondent sought to avoid countersigning the Commission Agreement and the Services Acceptance Acts, then this was a breach of the duty of good faith established by Article 2.4 of the FUR Intermediaries Regulations and could be construed as an attempt to cause harm to the Appellant in *"…bypassing the regulations with an unlawful purpose…"* by preventing the Appellant from being able to lodge countersigned copies with the FUR.

118. It is noted that the Russian Civil Code sets out the following regarding the mechanism for

offer and acceptance of an agreement between parties, as follows:

*"**Article 435.** The Offer*

***1.** The offer shall be recognized as the proposal, addressed to one or to several concrete persons, which is sufficiently comprehensive and which expresses the intention of the person, who has made the proposal, to regard himself as having concluded the contract with the addressee, who will accept the proposal.*

The offer shall contain the essential terms of the contract.

***2.** The offer shall commit the person, who had forwarded it, from the moment of its receipt by the addressee.*

If the notification about the recall of the offer comes in before, or simultaneously with the offer, the offer shall be regarded as not received.

[…]

***Article 438.** The Acceptance*

***1.** The acceptance shall be recognized as the response of the person, to whom the offer has been addressed, about its being accepted.*

The acceptance shall be full and unconditional.

***2.** The silence shall not be regarded as the acceptance, unless otherwise following from the law, from the custom of the business turnover, or from the former business relations between the parties.*

***3.** The performance by the person, who has received an offer, of the actions, involved in complying with the terms of the contract, pointed out in the offer (the dispatch of commodities, the rendering of services, the performance of works, the payment of the corresponding amount of money, etc.), shall be regarded as the acceptance, unless otherwise stipulated by the law or by the other legal acts, or pointed out in the offer"* (emphasis in original).

119. Applying this to the circumstances of this case, it is clear that the First Respondent made an offer to the Appellant, based on services it has already carried out given the fact that it was sent after the Player had signed the Additional Agreement, and the actions of the Appellant thereafter all indicate acceptance of the offer. The First Respondent did not offer any evidence that it either revoked the offer or indeed that it engaged with the Appellant in any way thereafter to indicate it was not agreeable to be bound by the terms of the offer set out in the Commission Agreement.

120. Notwithstanding that the terms were set out in writing in the Commission Agreement, it is assumed based on prior discussions and agreement between the Appellant and the First Respondent as to the key terms, given it was produced after the exercise of the services required of the Appellant, it is possible for the conclusion of a contract between parties to take various forms.

121. In this regard, support for the concept that contracts can be concluded in different forms can

be found in the following extracts from the Russian Civil Code:

*"**Article 432.** The Basis Provisions on the Conclusion of the Contract*

***1.** The contract shall be regarded as concluded, if an agreement has been achieved between the parties on all its essential terms, in the form proper for the similar kind of contracts.*

An essential shall be recognized the terms, dealing with the object of the contract, the terms, defined as essential or indispensable for the given kind of contracts in the law or in the other legal acts, and also all the terms, about which, by the statement of one of the parties, an accord shall be reached.

***2.** The contract shall be concluded by way of forwarding the offer (the proposal to conclude the contract) by one of the parties and of its acceptance (the acceptance of the offer) by the other party.*

***Article 433.** The Moment of the Conclusion of the Contract*

***1.** The contract shall be recognized as concluded at the moment, when the person, who has forwarded the offer, has obtained its acceptance.*

[…]

***Article 434.** The Form of the Contract*

***1.** The contract may be concluded in any form, stipulated for making the deals, unless the law stipulates as definite form for the given kind of contracts.*

If the parties have agreed to conclude the contract in a definite form, it shall be regarded as concluded after the agreed form has been rendered to it, even if the law does not require such form for the given kind of contracts.

***2.** The contract in written form shall be concluded by compiling one document, signed by the parties, and also by way of exchanging the documents by mail, telegraph, teletype, telephone, by the electronic or any other type of the means of communication, which makes it possible to establish for certain that the document comes from the party by the contract.*

***3.** The written form of the contract shall be regarded as observed, if the written offer to conclude the contract had been accepted in conformity with the order, stipulated by Item 3, Article 438 of the present Code".*

122. It is well-established CAS jurisprudence that contracts can be concluded in different forms, written or oral, and remain legally enforceable as confirmed in CAS 2013/A/3091, 3092 & 3093, in which the Panel concluded as follows:

"The Panel considers that, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement (Article 11 CO). However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof".

123. Further, CAS jurisprudence also makes it clear that a failure to follow regulatory requirements

as regards contracts between clubs and agents does not render the contract legally unenforceable (although it may result in one or both parties being subject to a sanction in accordance with the applicable regulations), as demonstrated in CAS 2011/A/2660 (and followed in CAS 2013/A/3443) in which the Panel concluded as follows:

"However, the Panel holds that such failures do not invalidate the entire agency agreement. If agents fail to comply with the requirements of Article 12 of the FIFA Regulations, Article 15 of the FIFA Regulations stipulates that "[p]layers' agents who abuse the rights accorded to them or contravene any of the duties stipulated in these regulations are liable to sanctions". But the FIFA Regulations do not state the consequence of a failure regarding the form of an agency agreement or payment details as to be the invalidity of an agency agreement. The same applies to the FIGC Regulations. That said, it has to be stressed that all regulations and jurisprudence the Respondent referred to do not foresee the invalidity of an agency agreement in case of failure to comply with the requirements stipulated by FIFA or FIGC. In fact, they only foresee the chance to impose sanctions. Therefore, the Panel finds that such provisions cannot invalidate an agency agreement and agents, clubs or players not following the FIFA or FIGC Regulations can only be subject to sanctions of the respective associations or federations, i.e. in the present case FIFA and FIGC. Of course, in addition, agents who do not comply with FIFA Regulations will not be able to seek for assistance or protection by FIFA".

124. Accordingly, despite the arguments of the First Respondent that the FUR Regulations should apply entirely (since it claims there is no lacuna in the FUR Regulations), this CAS jurisprudence demonstrates why it is necessary and appropriate to consider the underlying national law in certain circumstances notwithstanding that in accordance with Article R58 of the CAS Code, the applicable regulations are considered pre-eminent.

125. Furthermore, this line of jurisprudence also rebuts the First Respondent's contention that such case law regarding the validity of unsigned or oral contracts relates to player and club relationships as opposed to agent and club relationships given that CAS 2011/A/2660 and CAS 2013/A/3443 relate to agency arrangements.

126. It is therefore entirely possible for a contract to not be regulatory compliant yet still be legally enforceable.

127. Therefore, based on the chronology of events, it is reasonable to accept that the sending by the First Respondent of the Commission Agreement and the First Services Acceptance Act to the Appellant on 20 June 2020, after the Player has signed the Additional Agreement, to be a clear indication of its intention to conclude a contract. Furthermore, with regard to the First Respondent's position that there were matters remaining outstanding, which based on a review of both documents appears to be the following reference after the figures payable, *"…(VAT - ???)…"*, can be considered as secondary terms which a court may determine *"…with due regard to the nature of the transaction…"*. In that regard, the Sole Arbitrator notes that the Appellant does not seek to claim VAT on the amounts payable, and therefore this can be disregarded. In addition, the reference to VAT was omitted from the Second Services Acceptance Act. Therefore, the *"…secondary terms…"* issue falls away.

128. Taking all of the above into account, the Sole Arbitrator accordingly finds, to his comfortable satisfaction, that the Commission Agreement reflects the agreement of the Parties and is

therefore legally enforceable. Even though the formal requirements of the FUR Intermediaries Regulations were not fulfilled, the FUR internal bodies should have asserted jurisdiction in application of the principle of *"nemo auditur propriam turpitudinem allegans"*. By failing to return a signed copy of the Commission Agreement to the Appellant, the Respondent indeed acted in bad faith, trying to prevent the Appellant from collecting the commission payments. If the reasoning of the FUR internal bodies was followed, it would provide clubs with a mechanism to evade their liabilities to intermediaries in such circumstances, by engaging the services of the latter without formalising the arrangements (as can often happen in practice given the fast-moving nature of football transactions) and then refusing to countersign documents in a similar fashion.

C. What are the consequences that follow from the answer reached at (b) above?

129. By way of reminder, the Commission Agreement sets out the following in respect of the mechanism for the proposed resolution of any disputes arising out of the Commission Agreement:

"7.1 In case the Parties come across a dispute while performing this Contract, they shall settle it through direct negotiations between them.

7.2 In case the Parties could not amicably settle a dispute, any dispute, controversy or claim, arising from or in connection with this Contract, also in regards to its performance and (or) violation, shall be submitted to the FUR Dispute Resolution Chamber as the first instance

All Decisions of the FUR Dispute Resolution Chamber may be appealed to the FUR Committee on the Status of Players.

All Decisions of the FUR Committee on the Status of Players may be appealed to the Court of Arbitration for Sport (CAS, Lausanne, Switzerland). The CAS decision shall be final and is binding for the Parties. In this case the applicable law for a resolution of this dispute (disputes) shall be the legislation of the Russian Federation.

7.3 If after conclusion of this Contract the FUR's jurisdictional bodies would lose their jurisdiction over the disputes between the Clubs and the football Intermediaries (sports agents) or for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the fist [sic] *instance".*

130. Therefore, it is clear that the Appellant has followed the correct process set out in the Commission Agreement by filing this appeal with CAS.

131. In passing, it is noted that Article 68 of the FUR Regulations on Dispute Resolution specifically provides that CAS may reverse, modify and replace decisions of the FUR DRC and the FUR PSC.

132. Having established that the Commission Agreement is binding upon the Parties, the Sole Arbitrator is mindful that the merits of the Appellant's claim will only be determined by the

exercise of the power afforded to CAS under Article R57 of the CAS Code. This is attributed consistently in CAS jurisdiction to afford CAS panels with the power to consider cases *de novo* when deemed appropriate, as follows:

"R57 Scope of Panel's Review – Hearing

The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

133. The Sole Arbitrator has considered both options and has concluded that it is more appropriate to issue a new decision which replaces the decision challenged having reviewed the case in its entirety, as opposed to annulling the decision and referring it back to the previous instance, for reasons of procedural economy.

134. The Sole Arbitrator also takes into account the provisions of Article 7.3 of the Commission Agreement. Whilst it is assumed that this is intended to allow an alternative dispute resolution mechanism in the event that there is a regulatory change such that the FUR's jurisdictional bodies no longer maintained jurisdiction over disputes between clubs and intermediaries, it is noted that it also provides for circumstances where the FUR's jurisdictional bodies, *"…for any other reason would not consider the disputes, in this case the dispute between the Parties shall be submitted to a sole arbitrator as the fist* [sic] *instance".* It is reasonable to assume that this typo should instead read *"first".*

135. Whilst the Appellant has not engaged this provision explicitly, given it previously submitted the dispute to the FUR's jurisdictional bodies, it does give an insight into the position of the two Parties at the time of entering into the Commission Agreement, which is that if for any reason a dispute could not be heard by the FUR's jurisdictional bodies, then they agreed that it should be determined by a sole arbitrator.

136. Therefore, this gives the Sole Arbitrator further comfort that the Parties agreed that there could be various reasons why the FUR's jurisdictional bodies may not be appropriate to determine the merits of a dispute between them, however they were mindful that this should not prevent either of them from seeking resolution of a dispute in an alternative forum, such as CAS.

137. Accordingly, the Sole Arbitrator is content that it is both appropriate and in keeping with the two Parties' intentions at the time of entering into the Commission Agreement that the merits of the dispute should be determined using the CAS *de novo* powers set out in Article R57 of the CAS Code.

138. Furthermore, the Appellant specifically requests that CAS determines the case on its merits whereas the First Respondent does not plead in the alternative that the case should be remitted to the FUR PSC, simply that the Appealed Decision is correct and should be upheld. The position is analogous to that in CAS 2016/A/4581, in which the panel concluded as follows:

"55. The Panel notes here that, as FIFA never addressed the merits of the case, the CAS would de facto be

the first instance tribunal to review them. The Panel however also notes that public policy does not require that a case be heard at two levels and that none of the parties requests that the case be referred back to FIFA. Indeed, Apollon insistently requested the CAS to rule directly on the merits of the case, FIFA expressly agreed that the CAS decides "on the substance of the contractual dispute" and Partizan, on a modified basis, "would leave it up to the Panel to refer the case back to the previous instance or to issue a new decision". Further in its subsidiary prayers for relief, Partizan does not request that the case be referred back to FIFA but rather that the Appellant's case be dismissed.

56. In view of the above and of the full power of review conferred to CAS panels by Article R57 of the Code, the Panel will proceed with the analysis of the Appellant's substantive claims".

139. Having established the above, the Sole Arbitrator is satisfied that the merits of the Appellant's claim fall to be determined.

140. The Sole Arbitrator notes that it has already been established that the Commission Agreement is binding on the two Parties, and it is agreed that no payments have been made by the First Respondent to the Appellant in respect of the same. The Sole Arbitrator further notes that he has concluded, to his reasonable satisfaction, for all of the reasons previously set out, that the Appellant did carry out the Services set out in the Commission Agreement.

141. In this context, and to start with, the Sole Arbitrator holds that, in accordance with the well-established jurisprudence of the CAS, and the principle of *pacta sunt servanda*, the First Respondent is liable to fulfil its contractual obligations to the Appellant under the Commission Agreement, meaning that the contractual entitlements not paid are payable in full.

142. Further, this is supported by Article 393 of the Russian Civil Code which sets out the following:

"1. The debtor shall be obliged to recompense to the creditor the losses, caused to him by the non-discharge or by an improper discharge of the obligations".

143. Therefore, it is noted that the financial provisions set out in the Commission Agreement were as follows:

"3.1 For services rendered under the present Contract the Club undertakes to pay to the Intermediary a fixed remuneration in the amount of 255 582 (two hundred fifty-five thousand five hundred eighty-two) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after the signing by the Player of the additional agreement to the employment agreement with the Club dated 27 August 2019 on the extension of the term of the above-mentioned employment agreement till 31 July 2020.

3.2 In case the FC "LOKOMOTIV" as a result of 2019/2020 sporting season will qualify for participation in a group stage of the UEFA Champions League, the Club undertakes to pay the Intermediary additional remuneration in the amount of 300 000 (three hundred thousand) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after approval of the results of

Russian Championship between the clubs of the Tinkoff Russian Premier Liga (TINKOFF RPL) of the 2019/2020 sporting season, confirming the right participate of the FC "LOKOMOTIV" in the group stage of the UEFA Champions League.

3.3 In case the FC "LOKOMOTIV" as a result of 2019/2020 sporting season will qualify for participation in a group stage of the UEFA Europa League, the Club undertakes to pay the Intermediary additional remuneration in the amount of 150 000 (one hundred fifty thousand) euros (VAT - ???).

The remuneration shall be paid by the Club within 30 (thirty) banking days after approval of the results of Russian Championship between the clubs of the Tinkoff Russian Premier Liga (TINKOFF RPL) of the 2019/2020 sporting season, confirming the right participate of the FC "LOKOMOTIV" in the group stage of the UEFA Europa League.

3.4 The remuneration shall be paid by the Club to the Intermediary in rubles at the official rate of the Russian Central bank (Bank of Russia) at the date of the payment by bank transfer to the Intermediary's bank account (via bank transfer) indicated in this Contract. The Club's obligation on paying the remuneration shall be considered fulfilled on the date when the money is charged from the Club's bank account".

144. Accordingly, the Sole Arbitrator finds that the amount set out in Article 3.1, EUR 255,582 is payable by the First Respondent to the Appellant. This fell due for payment, according to Article 3.1, within 30 banking days after the Player signed the Additional Agreement. Given this was signed and dated 19 June 2020 then it is deemed that payment should have been made by 31 July 2020 of this amount.

145. With regard to the claim for the additional payment of EUR 300,000 set out in Article 3.2, Article 8 of the Swiss Civil Code states that a party has the burden of proving the facts underlying its claim(s) and it follows therefore that in the present case it is for the Appellant to establish that the First Respondent qualified for the group stage of the UEFA Champions League following the conclusion of the 2019/2020 season.

146. It is noted that the Appellant has adduced evidence from UEFA's official website to confirm the First Respondent's qualification for the group stage of the UEFA Champions League following the conclusion of the 2019/2020 season. The First Respondent did not raise any objection to this, or evidence to the contrary.

147. Therefore, the Sole Arbitrator is satisfied that the Appellant discharged its burden in this respect and accordingly finds that a further payment of EUR 300,000 is payable by the First Respondent in accordance with the terms of the Commission Agreement.

148. It appears that the final match played by the First Respondent in the 2019/2020 league season took place on 22 July 2020, based on a number of corroborating website reports, and therefore the payment for the First Respondent's qualification for the group stage of the UEFA Champions League for the following season should have been made, in accordance with the terms of the Commission Agreement, within 30 banking days which would mean on or before 2 September 2020.

149. Turning to Article 3.4, the Sole Arbitrator notes that it specifies that payment shall be made in *"…rubles at the official rate of the Russian Central bank (Bank of Russia) at the date of the payment…"*. Despite the Appellant claiming the sums to be paid in Euros, it provides no argument for why the terms of the Commission Agreement should be departed from in this respect, and given the provision regarding the currency in which payment should be made is clear and unambiguous, the Sole Arbitrator finds that payment should be made in Russian Rubles at the appropriate rate, as determined in accordance with the aforementioned provision, to satisfy the payment obligation of EUR 555,582 in total.

150. The Sole Arbitrator further finds that interest should be payable by the First Respondent to the Appellant for the period between the date the two amounts fell due for payment and the actual date of payment. In terms of the appropriate interest rate to apply, it is noted that neither the FUR Intermediaries Regulations, the FUR Regulations on Dispute Resolution nor the Commission Agreement set out the appropriate interest rate to apply to a non-payment. The Appellant cites Article 395 of the Russian Civil Code whereas the First Respondent makes no submissions on interest.

151. Article 395 reads as follows:

*"**Article 395.** Responsibility for the Non-Discharge of the Pecuniary Obligation*

***1.** For the use of the other person's money as a result of its illegal retention, of the avoidance of its return or of another kind of delay in its payment, or as a result of its ungroundless receipt or saving at the expense of the other person, the interest on the total amount of these means shall be due. The interest rate shall be defined by the discount rate of the bank interest, existing by the date of the discharge of the pecuniary obligation or of the corresponding part thereof at the place of the creditor's residence, and if the creditor is a legal entity - at the place of its location. If the debt is exacted through the court, the court may satisfy the creditor's claim, proceeding from the discount rate of the bank interest on the date of filing the claim or on the date of its adopting the decision. These rules shall be applied, unless the other interest rate has been fixed by the law or by the agreement".*

152. The Appellant argued that the interest applicable should be the average interest rate of the Central Bank of Russia over the period from the date the payments fell due until the date of actual payment. However, the Sole Arbitrator determines that for clarity, it would be more appropriate to set the interest rate applicable as the interest rate set by the Central Bank of Russia at the date of the filing of the claim which, on 25 August 2021, was set at 6.5%[3].

153. Therefore, the Sole Arbitrator finds, in accordance with Article 395 of the Russian Civil Code, the First Respondent has to pay interest on the amounts due until the date of effective payment at 6.5% interest rate.

154. Finally, the Appellant also claimed certain costs incurred in relation to the FUR DRC and FUR PSC proceedings, however in accordance with the well-established CAS jurisprudence, the Sole Arbitrator finds that costs referrable to first instance proceedings are not recoverable and

[3] Central Bank of Russia website - https://www.cbr.ru/eng/hd_base/KeyRate/

therefore does not make any award for such costs.

D. Conclusion

155. Based on the above, and having taken into account all the arguments put forward and the evidence supplied, the Sole Arbitrator finds that:

(a) the Appellant and the First Respondent concluded a contract for agency services in relation to the Player in the form of the Commission Agreement and, in accordance with the same, the First Respondent has failed to make the payments due to the Appellant set out therein;

(b) the First Respondent has to pay to the Appellant the following amounts:

a. EUR 255,582 converted into Russian Rubles at the rate effective on the date of payment plus interest at the rate of 6.5% from 31 July 2020 to the date of effective payment; and

b. EUR 300,000 converted into Russian Rubles at the rate effective on the date of payment plus interest at the rate of 6.5% from 2 September 2020 to the date of effective payment.

(c) the Appellant´s appeal against the Appealed Decision is upheld.

156. Accordingly, the Appellant's appeal against the Appealed Decision is upheld and the said decision is replaced by the above.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 August 2021 by Olea Sports Capital LLC against the decision issued on 4 August 2021 by the Committee on the Status of Players of the Football Union of Russia is upheld.

2. The decision issued on 4 August 2021 by the Committee on the Status of Players of the Football Union of Russia is set aside.

3. FC Lokomotiv Moscow is ordered to pay the following sums to Olea Sports Capital LLC as follows:

   (a) EUR 255,582 converted into Russian Rubles at the rate effective on the date of payment plus interest at the rate of 6.5% from 31 July 2020 to the date of effective payment; and

   (b) EUR 300,000 converted into Russian Rubles at the rate effective on the date of payment plus interest at the rate of 6.5% from 2 September 2020 to the date of effective payment.

4. (…).

5. (…).

6. (…).

7. All other and further motions or prayers for relief are dismissed.