**Arbitration CAS 2011/A/2660 Vincenzo d'Ippolito v. Danubio FC, award of 5 October 2012**

Panel: Prof. Martin Schimke (Germany), President; Mr José Juan Pintó (Spain); Mr Michele Bernasconi (Switzerland)

*Football*
*Contract between a players' agent and a club*
*Validity of the agency agreement in case of failure to comply with the requirements of the FIFA Regulations*
*Causal link between the services rendered by the agent and the transfer of the player*
*Prohibition to receive part of the transfer fee as remuneration*
*Determination of the agency fee*
*Commencement date of the default interests*

1. **The failure to draft an agency agreement on the standard forms provided by FIFA and the national association and/or to include any statement about the payment of an agency fee does not invalidate the entire agency agreement. If agents fail to comply with the requirements of the FIFA Regulations, the latter stipulate that agents are liable to sanctions, but they do not state the consequence of the failure as to be the invalidity of an agency agreement. Of course, in addition, agents who do not comply with FIFA Regulations will not be able to seek for assistance or protection by FIFA.**

2. **Swiss provisions for brokerage contracts distinguish between two types of mandates, i.e. a contract whereby the broker is instructed to alert the principal to an opportunity to conclude a contract or to facilitate the conclusion of a contract. If the instructions given to the agent were *"to begin negotiations"* but not to conclude the transfer contract, the agent's absence at the further negotiations and/or the signing of the transfer agreement does not affect the services actually rendered and is sufficient to establish a causal link between the services rendered by the agent and the transfer of the player.**

3. **Article 18 par. 3 of the FIFA Regulations does not prohibit to claim an agency fee from the "old" club which asked the agent rendering services concerning the player's transfer. From a strict interpretation approach this provision just says that payment cannot be made from the new club to the agent but rather must be made from club to club. It does not go as far as to prohibit an agent from being entitled to a lump sum proportion of the fee, i.e. if that was paid from club to club and then distributed to the agent from the receiving club.**

4. **The FIFA Regulations fail to stipulate how the remuneration of the agent has to be determined in the event the amount of an agency fee regarding an agency agreement between an agent and a club is unclear. As – at least in the present case – an application by analogy of Article 12 par. 7 of the FIFA Regulations would not be justified, it must**

**be looked at Swiss law to address the issue. If no tariff of fees and no custom exist, the judge has to determine the amount of the fee at his discretion, considering the following elements: the remuneration must correspond with the services rendered, i.e. to be adequate in an objective view, and the circumstances of the specific case have to be taken into consideration, namely the type and the duration of the mandate, the kind of responsibility and the profession and position of the agent.**

5. **According to Article 102, par. 1 Swiss CO, the obligor is in default only after receipt of a "formal reminder" from the obligee. If no proof has been adduced by the obligee that such a reminder was sent before the filing of the claim with the FIFA Player's Status Committee, this claim is to be considered as the first "formal reminder" to pay an agency fee. Consequently, the commencement date of interest is the day after the filing of the claim.**

## 1. THE PARTIES

1.1 Mr Vincenzo d'Ippolito (hereinafter *"Appellant"* or *"Agent"*) is a professional football players' agent of Italian nationality and licensed by the Federazione Italiana Giuoco Calcio (Italian Football Federation, FIGC). The Agent is represented by Mr Ettore Mazzilli, attorney-at-law, as his counsel in the present arbitration proceeding.

1.2 Danubio FC (hereinafter *"Respondent"* or *"Club"*) is a professional football club located in Montevideo, Uruguay and an affiliated member of the Asociación Uruguaya de Fútbol (Uruguayan Football Association; hereinafter *"UFA"*). The Club is represented by Mr Jorge Ibarrola and Mr Luca Tettamanti, attorneys-at-law, as its counsel in the present arbitration proceeding.

## 2. FACTUAL BACKGROUND

2.1 Below is a summary of the main relevant undisputed facts, as established by the Panel on the basis of the parties' written submissions and the exhibits produced as well as the submissions at the hearing held in Lausanne, Switzerland on 18 June 2012. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

2.2 The Appellant's claim for an agency fee is based on the transfer of the player E. (hereinafter the *"Player"*) from the Respondent to the Italian club US Palermo at the end of January 2007.

2.3 In January 2007, Mr Alberto Batista, "Gerente General" of the Respondent, issued a document in Spanish headed "AUTORIZACIÓN" and written under the letter head of the Respondent (hereinafter the *"Authorization"*) which in the end was forwarded to the Appellant. The English translation reads as follows:

*"Authorization*

*In Montevideo, on the day of the fifteenth of January 2007, DANUBIO F.C. represented in this act by Mr. Alberto Batista in his capacity as General Director, authorises Dr. VINCENZO D'IPPOLITO, Players' Agent licensed by FIFA, to begin on exclusive basis negotiations related to the transfer of our player E. in the territory of Italy.*

*The present is valid until 31 January 2007.*

*For DANUBIO F.C.*

[Not legible signature]

*ALBERTO BATISTA*

*General Director*

[Stamp of Danubio F.C.]".

2.4 On 25 January 2007, US Palermo sent to the Respondent an offer regarding a transfer of the Player for a transfer fee of EUR 3,700,000. On the next day, US Palermo sent the Respondent a quite similar offer with the same transfer fee. However, this further letter additionally referred twice to the Respondent as agent authorized by the Respondent.

2.5 At these days, at least one further Italian club was interested in acquiring the services of the Player, i.e. Fiorentina. This club sent a letter dated 24 January 2007 to the Respondent asking for the amount of a potential transfer fee and referring to the Appellant. By letter of 27 February 2007, the Respondent replied by requesting a total amount of EUR 4,300,000 plus 5% tax for the Player's transfer.

2.6 On 30 January 2007, the Respondent and US Palermo concluded a transfer agreement regarding the transfer of the Player for a transfer fee of EUR 4,095,000.

2.7 By letter of 1 February 2007 to the Respondent, US Palermo stated that the Appellant would have no right to claim any agency fee because he had not participated in the negotiations.

2.8 On 10 April 2007, the Appellant lodged a claim with the Federation International de Football Association (FIFA) against the Respondent for breach of contract claiming for a commission of 10% of the Player's transfer fee.

2.9 On 3 November 2009 and upon FIFA's request, the Respondent replied to the claim lodged against it. On 25 March 2010, the Appellant presented further comments and the Respondent presented its final comments on 23 August 2010.

2.10 On 5 April 2011, the FIFA Single Judge of the Players' Status Committee (hereinafter the *"FIFA Judge"*) rendered the following decision (hereinafter the *"FIFA Decision"*):

*"1. The claim of the Claimant, players' agent Vincenzo d'Ippolito, is rejected.*

*2. The costs of the proceedings in the amount of CHF 15,000 are to be paid by the Claimant, players' agent Vincenzo d'Ippolito,* ***within 30*** *days as from the notification of the present decision to the following bank account, with reference to case nr. 07-01095/gbo:* [bank account information]*".*

2.11 Thereafter, only the findings of the FIFA Decision were sent to the parties and the Appellant's counsel requested on Appellant's behalf the grounds of the FIFA Decision.

2.12 On 21 November 2011, FIFA notified the grounds of the FIFA Decision to the Appellant and to the Uruguayan Football Association asking to forward it to the Respondent because FIFA was not in possession of a properly working fax number of the Respondent. The grounds of the FIFA Decision can be summarized as follows:

- The FIFA Judge considered the Authorization as legally binding on the Respondent due to the principle of good faith, with such principle to prevail amongst parties to a contract.
- The FIFA Judge held that the alleged "oral" agreement between the parties for a percentage of the transfer fee cannot be considered as a lump sum according to Article 12 par. 8 of the FIFA Players' Agents Regulations (hereinafter *"FIFA Regulations"*). Furthermore, according to Article 18 par. 3 of the FIFA Regulations a players' agent cannot receive part of a transfer fee as remuneration. Therefore, the FIFA Judge rejected the Appellant's claim for a 10% agency fee.
- The FIFA Judge also rejected the claim based on a breach of the exclusivity of the Authorization because the Appellant had not proven the participation of any other agent on behalf of the Respondent. According to well-established FIFA jurisprudence an exclusivity clause could only be objected to other players' agents but not taken into consideration if a player or a club negotiates and concludes the employment or the transfer contract himself or itself.

## 3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 On 12 December 2011, the Agent filed a statement of appeal with the Court of Arbitration for Sport (hereinafter the *"CAS"*) directed against the Club with respect to the FIFA Decision. The Agent nominated Mr José Juan Pintó as arbitrator and paid the Court Office fee of CHF 1,000.00.

3.2 By fax-letter of 16 December 2011, the CAS Court Office requested the Agent to file an appeal brief in accordance with Article R51 of the Code of Sports-related Arbitration (hereinafter the *"Code"*) and requested the Club to nominate an arbitrator from the list of CAS arbitrators in accordance with Article R53 of the Code. The CAS Court Office also informed the parties that all written submissions should be filed in English and all exhibits submitted in any other language accompanied by a translation into English.

3.3 On the same date, the CAS Court Office informed FIFA about the statement of appeal and asked, according to Article R41.3 of the Code, whether FIFA intended to participate as a party

in the arbitration. By letter dated 27 December 2011, FIFA renounced its right to request an intervention but provided the CAS Court Office with an unmarked copy of the FIFA Decision.

3.4 On 22 December 2011, the Agent filed his appeal brief with several exhibits.

3.5 By letter of 28 December 2011, in accordance with Article R55 of the Code, the CAS Court Office invited the Club to file an answer within 20 days.

3.6 On 29 December 2011, the CAS Court Office received a letter from the Club dated 27 December 2011 and written in Spanish in which the Club objected to the present appeal proceeding because of late filing of the appeal. By fax-letter of the same date, the CAS Court Office replied that the appeal was filed within the applicable 21-day deadline and that therefore the present appeal proceeding is admissible.

3.7 By letter of 11 January 2012 from the law firm "Cuatrecasas, Gonçalves Pereira", the Club requested an extension of the time limits to file its answer and to nominate an arbitrator. On 13 January 2012, the law firm "Cuatrecasas, Gonçalves Pereira", informed the CAS Court Office that it did not represent the Club any longer. By letter of 16 January 2012, the CAS Court Office informed the parties that the Club's request had to be considered moot and invalid because the Club had not provided a power of attorney for any lawyers of the law firm "Cuatrecasas, Gonçalves Pereira".

3.8 By letters of 17 and 20 January 2012, the Club's present counsel provided a power of attorney, nominated Mr Michele Bernasconi as arbitrator and maintained the Club's request for an extension of the time limit to file an answer.

3.9 On 23 January 2012, the CAS Court Office informed that, pursuant to Article R55 of the Code, the time limit for the Club to file its answer was suspended and should be fixed after the Agent's payment of his share of the advance on costs. By letter of 1 February 2012, the CAS Court Office confirmed receipt of the Agent's share of the advance on costs and invited the Club to file its answer within 20 days.

3.10 By letter of 2 February 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Martin Schimke, President of the Panel; Mr José Juan Pintó and Mr Michele Bernasconi, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel.

3.11 On 21 February 2012, the Club's counsel requested a 4-day extension to file the Club's answer. On the same date, such request was granted and the deadline extended until 24 February 2012.

3.12 By letter of 22 February 2012, the CAS Court Office informed the parties that Mr Karsten Hofmann would act as *ad hoc* Clerk in the present arbitration proceeding.

3.13 By letter of 28 February 2012, the CAS Court Office confirmed receipt of the Club's answer dated 24 February 2012 (hereinafter the "*Answer*"). On 1 March 2012, the Club submitted a CD with English translations of already submitted exhibits.

3.14 On 3 April 2012, on behalf of the Panel, the CAS Court Office issued an Order of Procedure which was signed by the Appellant's counsel on 10 April 2012 and by the Respondent's counsel on 11 April 2012.

3.15 On 12 April 2012, following the Appellant's observations raised in his letter of 10 April 2012, the CAS Court Office confirmed, on behalf of the Panel, that the corrected amount in dispute is actually EUR 409,500.00 instead of EUR 390,000.00 as stated in the Order of Procedure.

3.16 A hearing was held on 18 June 2012 in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr Pedro Fida, Counsel to the CAS. The following persons attended the hearing:

i. for the Appellant: Mr Vincenzo d'Ippolito (Appellant), Mr Ettore Mazzilli (counsel), Ms Niki Kotsonis (interpreter);

ii. for the Respondent: Mr Jorge Ibarrola (counsel), Mr Luca Tettamanti (counsel), Mr Javier Vanella (interpreter).

3.17 At the hearing, the parties made submissions in support of their respective cases. The following witnesses were heard:

i. Mr Pantaleo Corvino: Sports Director of the Italian club Fiorentina (by phone, called by the Appellant);

ii. Mr Rino Foschi: Sports Director of the Italian club US Palermo (by phone, called by the Appellant);

iii. Mr Rinaldo Sagramola: CEO of the Italian club US Palermo (by phone, called by the Appellant);

iv. Mr Alessio Secco: Sports Director of the Italian club Juventus FC (by phone, called by the Appellant);

v. Mr Pierpaolo Triulzi: Player's agent from end of 2006 on (by phone; called by both the Appellant and the Respondent);

vi. Mr Alberto Batista: "Gerente General" of the Respondent (by skype-video and phone; called by the Respondent);

vii. Ms Anabela Zarate: Administrative Manager of Vansomatic SA (in person, called by the Respondent);

viii. Mr Pablo Betancur: Director of Vansomatic SA (in person, called by the Respondent);

ix. Mr Horacio Rolla: business partner of the Player's agent Mr Triulzi (by phone, called by the Respondent).

3.18 At the conclusion of the hearing, the parties confirmed that they had no objections in respect to their right to be heard and that they had been given the opportunity to fully present their cases.

3.19 On 11 July 2012, on behalf of the Panel, the CAS Court Office requested the Respondent to provide a further document referred to by the Respondent in its closing statement during the hearing. Such document was provided by the Respondent on the same date.

## 4. THE POSITIONS OF THE PARTIES

4.1 The Appellant submitted, in essence, the following:

- At least since August 2004, the parties had a *"significant relationship which was built on mutual trust and confidence"*. At that time, the Appellant paid the accommodation costs and further expenses of the Respondent's team concerning a two-night stay in Corridonia, Italy, for a training camp.
- In November 2006, the Appellant met with representatives of the Respondent (inter alia, its President Mr Arturo del Campo and Mr Alberto Batista) in a restaurant called "Rumi" in Montevideo, Uruguay. At this occasion, the Appellant was asked to look for a club in Italy to which the Player could be transferred and the Appellant was verbally promised to receive a commission of 10% of the transfer fee. Thereafter, the Appellant contacted several Italian clubs, inter alia US Palermo.
- The "Authorization" issued by Mr Batista in January 2007 had a binding legal effect on the Respondent.
- Since the Player was actually transferred from the Respondent to US Palermo the Appellant is entitled to a commission of 10% of the transfer fee. The FIFA Regulations do not require a "causal link" and Swiss law provides only for a "psychological relation".
- Although the rate of 10% was agreed only verbally, it can be proven by the Appellant, e.g. by Appellant's exhibits no 11 and 11bis, or by the witness statement and the testimony of Mr Corvino from the club Fiorentina. Article 12 par. 8 of the FIFA Regulations, which states that a club and an agent "shall" agree a lump sum in advance, does not prohibit the Appellant to claim his agreed commission of 10% of the Player's transfer fee because this rule is not mandatory. If the CAS Panel considered that the parties did not agree on a rate of 10%, the same rate can be applied based on Swiss law (Article 414 of the Swiss Code of Obligations, hereinafter *"Swiss CO"*). In addition, 10% is the usual agency fee for transfers as earned by the Appellant in other cases/transfers. In analogy to Article 12 par. 7 of the FIFA Regulations at least a minimum fee of 5% has to be paid.
- In any event, the Appellant provided his services for an agency fee. Article 1 par. 1 subpar. 2 of the FIFA Regulations state that the agents' services are provided *"for a fee"*. The same applies to Article 412 Swiss CO. Finally, Article 1 par. 1 subpar. 2 of the FIFA Regulations shifts the burden of proof and therefore the Respondent has to prove that no agency fee was agreed.

- The Respondent did not fulfil its obligation to pay an agency fee to the Appellant. The confirmation receipt dated 7 March 2007 is a "fake". Inter alia, the used letterhead was not the official letterhead of the Appellant.

4.2 In his statement of appeal and appeal brief, the Appellant submitted the following prayers for relief:

*"1. To fully accept the present Appeal.*

*2. As consequence, to fully set aside the appealed Decision of the Single Judge of the FIFA Players' Status Committee passed in Zurich, Switzerland on 5 April 2011.*

*3. To condemn the Respondent to pay to the Appellant immediately the amount equal to 10% of the total transfer fee agreed upon by and between the Italian club U.S. Città di Palermo S.p.A. and the Respondent related to the transfer of the player E. which took place in January 2007 as well as the relevant interest on such amount equal to 5 % per annum since 1 February 2007 until the date of effective payment.*

*4. As consequence of the above to state that the Appellant shall not pay any costs at all related to the proceedings in front of the FIFA Players' Status Committee leading to the Decision under appeal in the present proceedings.*

*5. For the effect of the above, to state that the Respondent shall be condemned to pay any and all costs of the present arbitrational proceedings including, without limitation, attorney's fee as well as any eventual further costs and expenses for witnesses and experts.*

*In this respect, the Appellant reserves the right to provide the Panel with all relevant documentation attesting the incurred amounts".*

4.3 The Respondent submitted, in essence, the following:

- The parties did not have any relationship and did not meet in any restaurant in November 2006. However, the Appellant had a business relationship with the Uruguayan company Vansomatic SA 1999 to 2011 while the Respondent and Vansomatic SA also had a business relationship.
- The "Authorization" issued by Mr Batista lacks power of representation because he was only an administrative clerk and not empowered to legally bind the Respondent. Furthermore, the Appellant should have known who the Respondent's actually representatives were, in particular its President Mr del Campo. It was the Appellant who called Ms Anabela Zarate, employee at Vansomatic SA, to support him with a document stating that he was authorized to negotiate a transfer of the Player, otherwise he could have got into trouble with the FIGC for rendering services without any authorization to do so. In order to render a favour to the Appellant, Ms Zarate called Mr Batista and he issued the Authorization dated 15 January 2007.
- In any event, any mandate given to the Respondent was formally invalid because contrary to the FIFA and FIGC Regulations it was not in written form. Furthermore, the Authorization is more a proxy than a written contract and it was not registered with FIGC. The Appellant had the knowledge how to proceed in a formally correct way

because in another case/transfer he had fully complied with the FIFA and FIGC Regulations.

- The Appellant did not participate in the negotiations between the Respondent and US Palermo and did not provide any services to the Respondent. The agents for US Palermo were Mr Eric Manasse and Mr Gerardo Ravaida only. In the present case, there is no "causal link" between the Appellant and the Player's transfer because a mere introduction is not sufficient for claiming agency fee as stated by the CAS in its awards CAS 2006/A/1019 and CAS 2007/A/1222.
- Finally, the claimed analogy to players' agent rules cannot entitle the Appellant to request the payment of an agency fee. The rules referred to provide regulations for contracts between agents and players and are therefore not comparable with the situation of agents contracted to a club.

4.4 In its Answer, the Respondent submitted the following prayers for relief:

*"I. The appeal filed by Mr Vincenzo d'Ippolito is dismissed.*

*II. Mr Vincenzo d'Ippolito shall bear all the costs of this arbitration.*

*I.(sic) Mr Vincenzo d'Ippolito shall compensate Danubio FC for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel but not less than CHF 40,000".*

## 5. JURISDICTION OF THE CAS

5.1 The jurisdiction of the CAS, which is not disputed, derives from Article R47 of the Code as well as Article 63 of the FIFA Statutes.

5.2 Article R47 par. 1 of the Code provides as follows:

*"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

5.3 Article 63 par. 1 of the FIFA Statutes supplements the aforementioned provision relating to the time limit for filing an appeal with the CAS. It reads as follows:

*"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

5.4 According to the *"Note relating to the motivated decision (legal remedy)"* at the end of the FIFA Decision, the motivated decision was a final decision within FIFA and could be appealed before the CAS. Consequently, the CAS has jurisdiction to decide on the present dispute. This is confirmed by the parties' signature of the Order of Procedure dated 3 April 2012 whereby the parties expressly declared the CAS to have jurisdiction to resolve the present dispute.

5.5 Under Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has the full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

## 6. APPLICABLE LAW

6.1 Article R58 of the Code provides as follows:

*"The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

6.2 This is in line with Article 187 par. 1 of the Swiss Private International Law Act (PILA) which in its English version states as follows: *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected".*

6.3 Article 62 par. 2 of the FIFA Statutes provides that *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".* In the present proceedings, the appeal is directed against a decision of FIFA and the jurisdiction of CAS is to be found in the FIFA Statutes, as stated above. Consequently, in the present proceedings the rules and regulations of FIFA shall apply primarily, in particular the FIFA Regulations. Since the claim before the FIFA Judge was lodged on 10 April 2007, the 2001 edition of the FIFA Players' Agents Regulations is applicable to the present case.

6.4 The applicability of the FIFA rules and regulations has not been disputed by any party. Consequently, in accordance with Article 62 par. 2 of the FIFA Statutes, Swiss Law shall apply complementarily. In addition, the respective rules and regulations of national football federations can be applicable as part of the FIFA rules and regulations as far as they are not contradictory. Since the Appellant is registered with the FIGC and because the Appellant's claim is based on the Player's transfer to the Italian club US Palermo, also the FIGC players' agents regulations are applicable as far as they do not contradict the FIFA Regulations.

6.5 The fact that the FIFA and FIGC rules and regulations are rules of private organisations does not change this result. It is generally accepted that the parties may choose a system of rules which is not the law of a State and that such a choice is consistent with Article 187 PILA (see CAS 2006/A/1180, par. 6 with several references).

6.6 Thus, the applicable law in this arbitration is the law chosen by the parties, i.e. the FIFA and FIGC rules and regulations and, subsidiary, Swiss law.

## 7. ADMISSIBILITY

7.1 The Respondent objected to the admissibility of the present appeal proceeding because of the alleged late filing by the Appellant.

7.2 However, the appeal was actually filed within the deadline provided by Article 63 par. 1 of the FIFA Statutes and stated on the last page of the FIFA Decision, i.e. 21 days after notification of such decision: although the FIFA Decision was issued by the FIFA Judge on 5 April 2011, the grounds of the FIFA Decision were notified by FIFA to the parties only on 21 November 2011 and the statement of appeal was filed by the Appellant on 12 December 2011. The Appellant complied with all of the other requirements of Article R48 of the Code, including the payment of the Court Office fee. It follows that the appeal filed by the Appellant is admissible.

## 8. MERITS OF THE APPEAL

8.1 Considering all parties' submissions and the testimonies of the witnesses at the hearing, the main issues to be resolved by the Panel are:

I. Did the parties conclude an agency agreement relating to a transfer of the Player in the 2006-2007 season?

II. If yes, was that agency agreement formally valid?

III. If yes, did the Appellant provide services under this agency agreement?

IV. If yes, do these services entitle the Appellant to claim an agency fee?

a. Any explicit agreement for an agency fee?

b. If not, determination by the Panel?

V. If the Appellant is entitled to an agency fee, is the Respondent obliged to pay interest on the amount of the agency fee?

### I. Did the parties conclude an agency agreement relating to a transfer of the Player in the 2006-2007 season?

8.2 An agreement between the parties, relating to the transfer of the Player from the Respondent to the Italian club US Palermo at the end of January 2007, could have been concluded (a) at an alleged meeting of the parties in a restaurant in Montevideo, Uruguay in November 2006 or (b) anytime and confirmed by forwarding the Authorization dated 15 January 2007.

*a. Meeting in a restaurant in Montevideo, Uruguay in November 2006*

8.3 The Appellant submitted that he met with representatives of the Respondent in November 2006 and, at this occasion, was asked to assist the Respondent with a potential transfer of the Player to an Italian club. According to the Appellant's submissions the meeting took place in

Montevideo, Uruguay, in a restaurant called "Rumi" and the Respondent's representatives allegedly were Mr Arturo del Campo, the Respondent's then President, and Mr Alberto Batista, the Respondent's "Gerente General". The Respondent disputed that meeting at all and also any meeting with the Appellant relating to a transfer of the Player.

8.4 The burden of proof for an agreement between the parties lies with the Appellant who refers to it as the basis of his claim. The Appellant was not able to exactly state when this alleged meeting took place but rather submitted that it was between 10 and 20 November 2006 when he stayed in the Sheraton Hotel in Montevideo during a business trip to South America. The submitted invoice of the Sheraton Hotel in Montevideo (Appellant's exhibit 4) actually confirms the check-in and check-out dates and states the Appellant's name. However, it can only prove Appellant's stay in that hotel but not a meeting with the Respondent's representatives. In addition, no one of the five witnesses called by the Appellant or any other witness did confirm such a meeting.

8.5 To the contrary, during his testimony at the hearing, Mr Batista, expressly denied a meeting with the Appellant in November 2006 or on any other date. He even testified that the Appellant and also a restaurant called "Rumi" were completely unknown to him.

8.6 Consequently, the Panel holds that the Appellant failed to prove that a meeting between the parties took place in November 2006 and therefore also the conclusion of an agreement between the parties at this occasion.

*b. Authorization dated 15 January 2007*

8.7 The Appellant also submitted that the Authorization dated 15 January 2007 and issued by the Respondent's "Gerente General", Mr Batista, confirmed the Appellant's mandate given by the Respondent.

8.8 At the hearing, Mr Batista testified that he had issued and signed the Authorization upon request of Ms Zarate, administrative manager of the company Vansomatic SA, for the only reason to do Ms Zarate a favour. Mr Batista also stated that he did not inform the Respondent's President about that issue. Instead, he forwarded the signed Authorization by fax to the office of Mr Pablo Bentancur at the company Vansomatic SA without the knowledge of the Respondent's President whom Mr Batista referred to as the Respondent's only legal representative.

8.9 In her testimony at the hearing, Ms Zarate confirmed the statements of Mr Batista. She added that she had been asked by the Appellant whether Vansomatic SA could obtain from the Respondent a document certifying his authorization to act on behalf of the Respondent regarding a transfer of the Player to an Italian club. According to her testimony, the reason why the Appellant had asked for that document were potential problems for the Appellant regarding his agent license after publication of two articles in Italian journals indicating Mr Triulzi as the Player's agent. Because she knew the Appellant as a business partner of Vansomatic SA since 2000, she asked Mr Batista by phone for an authorization document to avoid any problems for

the Appellant with the FIGC. After receiving the Authorization she forwarded that document by fax from the office of Vansomatic SA to the Appellant.

8.10 In the FIFA Decision, the FIFA Judge concluded that the Authorization *"could not be viewed as having no legal effects"* and based his decision on the good faith principle whereas the Appellant could have in good faith ignored the alleged lack of sufficient representation powers to sign the Authorization and to bind the Respondent.

8.11 At this point, the main question for the Panel is whether the Appellant was mandated by the Respondent or not and whether the Authorization has to be seen as a mandate or even as a confirmation of a mandate given to the Appellant. This has to be considered under the circumstances of the present case.

8.12 One of these circumstances is the position of Mr Batista within the Respondent. The Respondent argued that Mr Batista has only been an administrative clerk without any power to legally bind the Respondent and that his title "Gerente General" is only an honorary title without any legal effect. Mr Batista confirmed these arguments at the hearing and additionally testified that he personally had never been involved in any negotiations with players and that the only legal representative of Respondent was its President. However, at the hearing the Appellant referred to exhibits of Respondent's Answer where Mr Batista had signed two orders of payments to be transferred from a bank account held by the Respondent at a bank in Miami, Florida, USA in the amounts of EUR 58,000.00 and EUR 151,625.00 (Respondent's exhibit 37). These orders were written on the Respondent's official letterhead, stamped with the Respondent's seal and co-signed by a person named "Arminak Tavojkian". When confronted with these documents, Mr Batista testified that he did not remember those payments, had no explanation for his signatures and did not know a person named "Arminak Tavojkian".

8.13 A further point to be considered by the Panel is the relationship between the Appellant, the Respondent and the company Vansomatic SA. Taking into consideration the parties' submissions and the witnesses' testimonies on this issue the Panel finds that the Respondent knew the Appellant as an agent at least since August 2004 when the Respondent's team stayed for a trainings camp in Italy. Furthermore, the Panel has no reason to doubt about the correctness of Mr Bentancur's testimony that in the past the Respondent had given authorizations to both, the Appellant and Vansomatic SA, for negotiations in regard to player transfers.

8.14 In addition, the Panel notes that US Palermo was aware of the Authorization as Mr Sagramola, CEO of US Palermo, testified at the hearing and as it was already mentioned in Palermo's letter of 26 January 2007 to the Respondent which was signed by Mr Foschi, Sports Director of US Palermo. According to Mr Sagramola's testimony, Mr Foschi was the person responsible for negotiations regarding player transfers and in this regard empowered to send letters with legal binding effect.

8.15 The Panel is of the view that, if the Respondent, except Mr Batista, actually did not have any knowledge about the Authorization until then, one would have expected the Respondent to

reply to US Palermo on this issue or even to contact the Appellant. However, the Respondent remained silent and did not object this point. As testified by Mr Corvino, Sports Director of Club Fiorentina, the Appellant got also in contact with him regarding a potential transfer of the Player and at this occasion showed the Authorization to Mr Corvino who accepted it without any doubt.

8.16 Given the above, the Panel is confident to hold that the Authorization at least confirms a mandate given by the Respondent to the Appellant to start negotiations with Italian clubs in order to transfer the Player. The Panel finds that Mr Batista was entitled to legally bind the Respondent regarding the payment of high amounts and the Respondent failed to show that Mr Batista was in contrast not entitled to sign documents like the Authorization. At least after receipt of Palermo's letter of 26 January 2007, the Respondent's President was aware of the Authorization given to the Appellant. However, before the signing of the Player's transfer agreement, the Respondent has never objected at any time that it was not represented by the Appellant. Therefore, the Respondent has to be liable at least for the legal appearance of an authorization in which a bona fide third party placed confidence. Such a third party was US Palermo as proven by Mr Sagramola's testimony and Palermo's letter of 26 January 2007 to the Respondent.

8.17 Consequently, the Panel holds that a mandate was given and an agency agreement concluded between the parties regarding the transfer of the Player to an Italian club.

## II. Was that agency agreement formally valid?

8.18 The Respondent submitted that the Authorization did not meet the requirements under the FIFA and FIGC Regulations because it was not in written form and not registered with the FIGC. In addition, any remuneration by a lump sum had to be agreed upon in advance. Therefore, any agreement on an agency fee for the Appellant would be invalid.

8.19 The relevant provisions of the FIFA Regulations state as follows:

*"Art. 12*

*[1] A players' agent may represent or take care of the interests of a player or club in compliance with art. 11 only if he has concluded a written contract with the player or club.*

*[2] […] The Contract shall explicitly mention who is responsible for paying the players' agent's fee, the type of fee and the prerequisite terms for the payment of the fee.*

*[…]*

*[8] A players' agent who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance".*

8.20 The Panel notes that the Authorization is in written form but not drafted on the standard forms provided by FIFA and FIGC. The Authorization also does not contain any statement about the payment of an agency fee.

8.21 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.

8.22 The same applies even after taking in consideration the decision of the FIFA Single Judge of the Players' Status Committee in the case "Casini v. Vestel Manispor" of 2 September 2008 to which the Respondent referred in its closing statement at the hearing and of which a copy was provided upon the Panel's request after the hearing. In that decision, the claim of an agent for an agency fee was denied based on the fact that no written agency agreement existed. However, the agent's request was not dismissed because of invalidity of the agency agreement due to the failure of written form. In that case, the claim was rejected because it could not be established that the club agreed to pay to the agent any commission.

8.23 The Panel agrees that the failure to conclude an agreement in written form according to the FIFA or FIGC Regulations can (i) make it impossible for a party to seek protection from FIFA and (ii) create consequences for the consideration of an entitlement for agency fee and about the correct amount of an agency fee. However, the failure to conclude an agreement in written form is no question of the validity of an agency agreement *per se*.

8.24 The Panel also agrees that the alleged agreement on an agency fee of 10% of a transfer fee is an agreement for a lump sum proportion of a transfer fee which shall be agreed upon in advance according to Article 12 par. 8 of the FIFA Regulations. However, considering the wording of this provision, the used term "shall" clearly shows that the FIFA Regulations are not mandatory.

8.25 Consequently, the Panel holds that the mandate given to the Appellant by the Respondent does not show any points which could create doubt about the validity of the agency agreement.

## III. Did the Appellant provide services under this agency agreement?

8.26 According to Article 11 lit. d of the FIFA Regulations, a licensed players' agent has the right to take care of the interests of any club which requests him to do so.

8.27 The Appellant is a professional players' agent licensed by the FIGC and the Authorization states the services to be rendered by the Appellant as *"to begin on exclusive basis negotiations related to the transfer of [the Player] in the territory of Italy"*.

8.28 At the hearing, Mr Corvino, Sports Director of the Italian club Fiorentina, testified that he was contacted by the Appellant by phone regarding a potential transfer of the Player. Thereafter, he remained in contact with the Appellant and later he had a phone call with the Respondent's President making a proposal for a transfer of the Player. Fiorentina also made a written offer dated 24 January 2007. Mr Corvino also testified that he had never been in contact with the Respondent before he was contacted by the Appellant.

8.29 Mr Alessio Secco, Sports Director of the Italian club Juventus FC, stated at the hearing that he was one of the persons within Juventus FC responsible for player transfers. He further testified that the Appellant came to his office without any request of Juventus FC to speak about a potential transfer of the Player. Mr Secco knew the Appellant as a professional agent but due to financial reasons Juventus FC was not interested in a transfer of the Player.

8.30 Mr Sagramola, CEO of US Palermo, testified at the hearing that he was aware of a contact between the Appellant and Mr Foschi, who was the Sports Director of US Palermo at the time of the Player's transfer and in this position responsible for negotiations regarding player transfers. In his testimony, Mr Sagramola also referred to the letter of 26 January 2007 sent from US Palermo to the Respondent's President mentioning the Appellant as agent involved in the Player's transfer.

8.31 Considering the witness testimonies and the parties' submissions, the Panel finds that the Appellant contacted several Italian clubs regarding the transfer of the Player. At least the Italian clubs Fiorentina and US Palermo, each contacted by the Appellant, started detailed negotiations and submitted offers to the Respondent while the Respondent replied to both. Consequently, the Appellant rendered those services as asked to do according to the Authorization.

## IV. Do these services entitle the Appellant to claim an agency fee?

8.32 The Respondent argued that the Appellant did not participate in the negotiations between the Respondent and US Palermo and did not provide any services to the Respondent regarding the transfer of the Player. The Respondent further submitted that a mere introduction should not be sufficient for claiming an agency fee and in this context referred to CAS jurisprudence, in particular CAS 2006/A/1019. The quoted part of that award reads as follows:

*"It is an accepted legal principle that subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he/she is not entitled to such a remuneration unless he/she is the effective cause of the transaction being brought about"*.

8.33 First of all, the Panel holds that the quoted decision was about an agency agreement between a player and an agent. Instead of this, the agency agreement subject to the present dispute was

agreed between a club and an agent. Therefore, the two cases cannot be considered as being identical.

8.34 Secondly, the quoted section of the decision CAS 2006/A/1019 states that *"the agent earns his remuneration upon bringing about a certain transaction"* and *"he/she is not entitled to such a remuneration unless he/she is the effective cause of the transaction being brought about"*. This has to be understood as an agreement to pay any remuneration only in the case of a successful transfer ("transaction") of a player. It is different in the present dispute. The Authorization shows that the Appellant was obliged to "begin negotiations", in other words to offer the Player to Italian clubs for a potential transfer. As stated above, the Appellant has rendered those services according to the mandate given to him.

8.35 Even if one would demand for a "causal link" between the services rendered and the transfer of the Player from the Respondent to US Palermo, the Panel finds that such a "causal link" appears in the present case. As testified by Mr Sagramola, the Appellant contacted US Palermo concerning a potential transfer of the Player and in the end, i.e. only a few days later, the Player was transferred from the Respondent to US Palermo.

8.36 When considering Swiss law, which is subsequently applicable in the present proceedings, the Panel notes that the Swiss provisions for brokerage contracts distinguish between two types of mandates, i.e. a contract whereby the broker is instructed to alert the principal to an opportunity to conclude a contract or to facilitate the conclusion of a contract (Article 412 par. 1 Swiss CO). According to the Authorization the Appellant was obliged *"to begin negotiations"* with Italian clubs but had not to conclude the transfer contract on behalf of the Respondent. Therefore, the Appellant's absence at the further negotiations and/or the signing of the transfer agreement does not affect the services actually rendered by the Appellant.

8.37 Thus, the Panel holds that a "causal link" exists between the Appellant's services rendered for the Respondent on the one hand and the transfer of the Player from the Respondent to US Palermo on the other hand. However, to decide any claim of the Appellant for agency fee, the Panel needs to consider (a) whether the parties explicitly agreed on the remuneration of agency fee and, (b) in the absence of such an agreement, the Panel's power to determine an amount.

*a. Any explicit agreement for an agency fee?*

8.38 The burden of proof for an explicit agreement for remuneration of agency fee lies with the party which claims the agency fee. Thus, the Appellant has to prove his allegation that the parties agreed on an agency fee of 10% of the transfer fee for the Player.

8.39 The Appellant submitted that he was verbally promised to receive a commission of 10% of the transfer fee when he met with representatives of the Respondent in a restaurant in Montevideo, Uruguay, in November 2006. As stated above, the Respondent objected that this meeting actually took place and Appellant failed to prove it.

8.40 For further proof of his allegation, the Appellant referred to Mr Corvino's testimony at the hearing, to Mr Corvino's witness statement and to the letter dated 26 January 2007 from US Palermo (signed by Mr Foschi) to the Respondent's President.

8.41 Although the letter of 26 January 2007 mentions the Appellant as the *"FIFA agent in Italy responsible for handling the potential transfer of [the Player]"* and that *"any consideration due to [the Appellant] is to be included in the transfer amount"* it does not mention the allegedly agreed 10% agency fee. The statements in the letter of 26 January 2007 do not prove an agreement between the parties for remuneration of 10% of the transfer fee for the Player.

8.42 The same applies to the witness statement and the further testimony of Mr Corvino at the hearing. In his witness statement, Mr Corvino testified about a statement of the Appellant that *"he had arranged with [the Respondent] to receive from [the Respondent] 10% of the transfer fee agreed upon related to the Player's potential transfer"*. However, Mr Corvino was not personally present when the alleged remuneration should have been agreed. Thus, Mr Corvino's statement is only hearsay and taking into consideration that the quoted statement came from the Appellant himself and not from any third person present when the agency fee was allegedly agreed, the Panel finds that the Appellant has not proven the alleged verbal agreement on an agency fee of 10%.

8.43 Consequently, the Panel holds that the parties did not agree on an agency fee of 10% of the transfer fee for the Player.

*b. Determination by the Panel?*

8.44 Although an explicit agreement on an amount for agency fee has not been proven, the Panel deems itself empowered to determine (aa) whether the parties generally agreed on the payment of agency fee and if yes, (bb) about the amount to be remunerated to the Appellant.

aa. General agreement on agency fee?

8.45 The question for the Panel is whether the parties agreed to pay the Appellant for his services or whether the Appellant has rendered his services for free.

8.46 At the hearing, Mr Secco was asked about his experience of agents providing services without fees and he answered that this "sometimes" happens, e.g. when players were offered by agents who did not officially represent that players.

8.47 To the contrast, Article 1 par. 1 subpar. 2 of the FIFA Regulations presumes that agents provide their services *"for a fee"*. Also Article 412 par. 1 CO contains a presumption that services under a brokerage contract are provided *"in exchange for a fee"*.

8.48 In the FIFA Decision, based on Article 18 par. 3 of the FIFA Regulations, the FIFA Judge held that an agent cannot receive part of the transfer fee as remuneration. Article 18 par. 3 of the FIFA Regulations reads as follows:

*"A club which pays another club compensation shall pay it directly to the beneficiary club. It is strict forbidden for the club making the remittance to pay any of the amount, either partially or wholly, to the players' agent, not even as remuneration".*

8.49 The Panel holds that from a strict interpretation approach this provision just says that payment cannot be made from the new club to the agent but rather must be made from club to club. It does not go as far as to prohibit an agent from being entitled to a lump sum proportion of the fee, i.e. if that was paid from club to club and then distributed to the agent from the receiving club. Thus, the Panel concludes that Article 18 par. 3 of the FIFA Regulations does not prohibit the Appellant to claim an agency fee from the Respondent as the "old" club which asked the Appellant rendering services concerning the Player's transfer.

8.50 The letter dated 26 January 2007 of US Palermo to the Respondent's President, where a *"consideration due to [the Appellant]"* was mentioned, and the subsequent silence by the Respondent show that the Respondent was aware of the fact that the Appellant did not render his services for free but rather for a commission. Considering also the presumptions in Article 1 par. 1 subpar. 2 of the FIFA Regulation and Article 412 par. 1 Swiss CO, the Panel finds that both parties agreed to have the Appellant's services rendered for an agency fee.

bb. Amount to be remunerated to the Appellant?

8.51 Based on the fact that the parties agreed to pay an agency fee to the Appellant for rendering his services but failed to agree its amount, the Panel has to determine the amount of the agency fee by considering the applicable law, i.e. the FIFA Regulations and Swiss law.

8.52 Article 11 par. 7 of the FIFA Regulations stipulates for an agency agreement between an agent and a player how the remuneration of the agent has to be determined if the agent and the player *"cannot reach agreement on the amount of remuneration to be paid or if the representation contract does not provide for such remuneration"*. However, the FIFA Regulations fail to stipulate the determination in the event the amount of an agency fee regarding an agency agreement between an agent and a club is unclear.

8.53 First it must be analyzed whether an application by analogy of Article 12 par. 7 of the FIFA Regulations would be justified. Such rule foresees, as a kind of "default", a fee of 5% of the annual basic gross income that an agent has negotiated for the player represented by him. Taking in consideration the submissions made and the circumstances of this case, the Panel is of the view that no such analogy can be made: In fact, the Panel is not aware of the salary of the Player, nor has Appellant ever claimed to have negotiated such a salary. Finally, no submission was filed asking the Panel to take in consideration such an income base. Therefore, the Panel cannot rely on Article 12 par. 7 of the FIFA Regulations.

8.54 In lack of any applicable provision under the FIFA Regulations, the Panel has to look at Swiss law (in particular Articles 412 et seq. Swiss CO) to address the issue.

8.55 Article 414 Swiss CO reads as follows:

*"Where the amount of remuneration is not stipulated, the parties are deemed to have agreed a fee determined by the tariff of fees, where such exists, and otherwise by custom".*

8.56 As mentioned above, the parties did not agree on the amount of the agency fee. Following Article 414 Swiss CO the Panel notes that no "tariffs" applicable have been either argued or submitted to the Panel. It remains therefore to be evaluated whether there is a "custom" that could be applied by the Panel, in accordance with the last sentence of Article 414 Swiss CO.

8.57 The Panel is aware of the statement of Mr Corvino, according to which an agency fee of 10% of the transfer fee seems to be usual in football (cf. witness statement of Mr Corvino, which is Appellant's exhibit 15, page 3), but the statement has not been corroborated by further objective and convincing evidence. Further, the Appellant made reference to prior transfers in which he was allegedly involved. However, his evidence is weak, because the only evidence provided for this argument (Appellant's exhibit 19) contains a hand written amount for the commission while all other parts of the document are printed.

8.58 Therefore, based on the information and the evidence submitted, the Panel is not satisfied that an agency fee of 10%, calculated on the entire amount of a transfer fee is customary for agency services as rendered by the Appellant. Accordingly, the two elements foreseen in Article 414 Swiss CO, i.e. tariffs and custom are of no assistance in the present case.

8.59 Under Swiss law, it has been recognized that if no tariff and no custom exist, the judge has to determine the amount on the agency fee on his discretion (cf. Swiss Federal Tribunal, ATF 101 II 109, page 111; Cour de justice Genève, SJ 1984 page 366; AMMANN C., Basler Kommentar, Obligationenrecht I, 5th edition, Art. 414 OR, N1 and N5). According to the Swiss Federal Tribunal (ATF 101 II 109, page 111), the judge has to consider the case under general aspects when determining the amount:

- The remuneration must correspond with the services rendered, i.e. to be adequate in an objective view.
- Furthermore, the circumstances of the specific case have to be taken into consideration, namely the type and the duration of the mandate, the kind of responsibility and the profession and position of the agent.

8.60 In this context, the Panel considers that in the present case, the Appellant was only asked to *"begin negotiations"* and these actually have been the only services rendered by the Appellant. As established above, the Appellant did in fact not participate at the later stages of the transfer negotiations.

8.61 Therefore, taking into consideration the rather short duration of the representation, the rather limited involvement of the Appellant in the transfer negotiations, the lack of evidence submitted

to the Panel with regard to potential investments or expenses potentially incurred by the Appellant and finally his quite moderate responsibility as for the completion of the transfer, the Panel is of the view that an agency fee of 3% of the transfer fee paid to the Respondent by the Italian club US Palermo (i.e. 3% of EUR 4,095,000) is objectively adequate to the services rendered and the circumstances of the case. Accordingly, the Respondent has to pay to the Appellant an amount of EUR 122,850.

## V. Is the Respondent obliged to pay interest on the amount of the agency fee?

8.62 The Appellant requests interest on the claimed amount of the agency fee in the rate of 5% p.a. since 1 February 2007 – or alternatively since 4 April 2007 – until the date of effective payment.

8.63 Due to lack of any agreement between the parties and any applicable provision under the FIFA Regulations, the Panel has to look at Swiss law (in particular Articles 102 et seq. Swiss CO) to address the issue of default interest.

8.64 Article 104, par. 1 Swiss CO reads as follows:

*"A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract".*

8.65 Consequently, the Appellant's entitlement for default interest requires that the Respondent was *"in default"* on payment of the agency fee. The applicable provisions for default are stipulated in Article 102 Swiss CO, which reads as follows:

*"[1] Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee.*

*[2] Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline".*

8.66 Article 102, par. 2 Swiss CO does not apply in the present case because of lack of a deadline for performance. According to Article 102, par. 1 Swiss CO, the Respondent would have been in default only after receipt of a "formal reminder" from the Appellant. The Appellant has failed to prove that the Respondent received such a reminder before filing the claim with the FIFA Player's Status Committee. Therefore, the Panel considers the Appellant's claim as the first "formal reminder" to pay an agency fee. According to the FIFA Decision, the claim was lodged on 10 April 2007. Consequently, the commencement date of interest is the day after the filing of the claim, i.e. 11 April 2007.

8.67 Thus, the Appellant is entitled to interest of 5% p.a. on the amount of EUR 122,850 since 11 April 2007.

## 9. CONCLUSION

9.1 In summary, the Panel concludes that Respondent has to pay to the Appellant an amount of EUR 122,850, plus 5% p.a. since 11 April 2007 until the date of effective payment.

9.2 The Appellant has requested the Panel to state that he shall not pay any costs at all related to the proceedings in front of the FIFA Players' Status Committee. The Appellant, however, has not been able to submit that the determination of the costs in the Appealed Decision was not in line with the applicable procedural rules, i.e. the FIFA Rules Governing the Procedures of the Players´ Status Committee and the Dispute Resolution Chamber. Further, the outcome of the present proceedings does not justify, in view of the Panel, that the cost determination of the FIFA DRC should be set aside or amended. Accordingly, this request of Appellant is rejected.

9.3 The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

# ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr Vincenzo d'Ippolito on 12 December 2011 is partially upheld.

2. The item 1 of the decision of the FIFA Single Judge of the Players' Status Committee dated 5 April 2011 is amended as follows: Danubio FC shall pay to Mr Vincenzo d'Ippolito an amount of EUR 122,850, plus 5% p.a. since 11 April 2007 until the date of effective payment.

(…)

5. All other or further claims are dismissed.