



The

## **FIVB TRIBUNAL**

herewith issues the following

### **DECISION**

on the Request for Review of CF 54/2016 filed by

**Agent 1 (“First Claimant”)  
Agent 2 (“Second Claimant”)  
(together “Claimants”)**

jointly represented by Mr. Tomasz Dauerman and Mr. Łukasz Klimczyk,  
Legal Advisors, Dauerman Sport Law  
ul. Grota Roweckiego 47, 52-218 Wrocław, Poland

vs.

**Player (“Respondent”)**

represented by Mr. Luis Fernando Pamplona Novaes,  
Rua Dr. Amadeu da Luz, no. 100, 10 andar – Blumenau – Santa Catarina, Brazil

## 1. The Parties

1. The Claimants are FIVB Licensed Agents from Poland.
2. The Respondent is a professional volleyball player from Cuba.

## 2. The FIVB Tribunal Judge

3. Article 19.1.5 of the FIVB Sports Regulations (hereinafter the "Regulations") provides as follows:

*"Cases before the FIVB Tribunal shall be heard by the Chairperson, provided that the amount in dispute does not exceed CHF 200'000 (two hundred thousand Swiss Francs). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. If one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 20.4), the Chairperson shall appoint another member of the FIVB Tribunal. If the Chairperson is unavailable or ineligible due to reasons of conflict (see Article 20.4), he/she shall be replaced by the Vice-Chairperson."*

4. Because amount in dispute in the present case does not exceed CHF 200,000, this Request for Review will be heard by a Chairperson. Because the Chairperson of the FIVB Tribunal was no longer sitting on the FIVB Tribunal when this case was initiated, the Vice Chairperson of the FIVB Tribunal, Mr. Liu Chi from China, was acting Chairman and, thus, was appointed as the single judge in the present case (hereinafter "FIVB Tribunal Judge").

## 3. Facts and Proceedings

5. The following section provides a brief overview of the relevant facts and proceedings for the purposes of the FIVB Tribunal Judge's decision in the present case.

### 3.1 Background Facts

6. On 5 January 2016, the Respondent granted an exclusive Power of Attorney to the Claimants to represent her in all matters regarding her playing career in Europe starting from 5 January 2014 until 20 June 2020 (hereinafter the "PoA"), which provided the following:

"

#### POWER OF ATTORNEY

*I the undersigned, ..... (Player) residing in:: [Respondent's address and passport number], in period from 5<sup>th</sup> January 2014 to 20<sup>th</sup> June 2020, hereby authorize my*

*sports agents ..... (Agent 2) and ..... (Agent 1) residing in [Claimants' address] to act on my behalf and represent me in all legal and factual activities concerning my all issues in Europe and to receive remuneration every time specify in contract with club. This power of attorney have an exclusively character, so mentioned above sports agents have the only right to act on my behalf in identified scope.*

*I declare that I understand and agree to accept responsibility indicated below.*

*If I the undersigned, ..... (Player) after granting this proxy and signing contract with the sports agents ..... (Agent 2) and ..... (Agent 1), will authorize someone else to acting on my behalf or if I will sign a sport contract with club on my own, I will be obliged to pay amount of 100.000,00 EURO for my sports agents as a compensation arising from misperformance of this agreement.” (sic, Translation from Spanish provided by the Claimants)*

7. On 15 January 2015, the Respondent, the Second Claimant and the Azerbaijani Club Rabita Baku (hereinafter the “Club”) signed an agreement in which the Respondent would play for the Club’s first team and the Second Claimant would receive a commission for his services rendered in negotiating the agreement.
8. The Claimants claim that they zealously represented the Respondent during her time with the Club whereas the Respondent claims that Claimants acted in their own self-interest of retaining their relationship with the Club by failing to assist her in obtaining late salary payments from the Club from December 2014 through March 2015.
9. On 21 March 2015, the Respondent sent a notification to the Claimants informing them that she was terminating their contractual relationship, in essence, based on the fact that the Claimants failed to act on her behalf. The Claimants claim that the PoA has never been revoked by the Respondent.
10. On 20 April 2015, the Respondent sent an official designation letter to the Club indicating Mr. Alessandro de Lima as her official agent.
11. On 12 May 2015, the Club contacted the Claimants in order to clarify who represented the Respondent and the Claimants informed it that the PoA was still valid as it was not revoked.
12. On 12 June 2015, the Claimants sent a letter to Respondent demanding the payment of EUR 100,000.00 based on the Respondent’s alleged infringement of the PoA.
13. On 1 December 2015, the First Claimant became an FIVB-Licensed Agent.
14. On 30 December 2015, the First Claimant filed his Complaint against the Respondent before

the FIVB.

15. On 1 January 2016, the Second Claimant became an FIVB-Licensed Agent.
16. On 8 February 2016, the Second Claimant requested to intervene in the proceedings between the First Claimant and the Respondent.

### **3.2 The Proceedings before the FIVB Tribunal**

17. On 30 June 2016, the FIVB issued a decision in the present manner in accordance with Article 45.11 of the FIVB Sports Regulations (hereinafter the "Decision") dismissing the First Claimant's complaint and the Second Claimant's Request for Intervention holding that it did not have competence to decide the dispute because the Claimants were not FIVB-Licensed Agents at the time that the events leading to the present dispute took place. The Claimants were notified of the Decision on the same day that the decision was issued.
18. On 14 July 2016, the Claimants filed their Request for Review, which included their "Reasons for Appeal", a copy of the Decision, a copy of the PoA, a request for a hearing and proof of payment of the handling fee.
19. On 21 July 2016, the FIVB Tribunal Secretariat acknowledged receipt of the Request for Review and invited the Respondent to submit her Answer by no later than 11 August 2016.
20. On 10 August 2016, the Respondent submitted her Answer.
21. On 19 August 2016, the FIVB Tribunal Secretariat acknowledged receipt of the Respondent's Answer, informed the Parties that their submissions would be sent to the FIVB Tribunal Judge and stated that the FIVB Tribunal Judge would determine whether any further submissions were necessary.
22. On 4 January 2017, the FIVB Tribunal Secretariat informed the Parties that the FIVB Tribunal Judge had requested the file from the first instance proceedings in accordance with Article 20.6.2 of the Regulations. A copy of the file was provided to the Parties. The FIVB Tribunal Secretariat would review the file and make a determination as to whether or not a hearing was necessary.

## **4. The Parties' Submissions**

23. The following section provides a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

#### **4.1 The Claimants' Request for Review**

24. First, the Claimants asserted that the FIVB had jurisdiction in the present case because the Regulations do not provide a requirement that an agent must have obtained his license during or before the facts and circumstances giving rise to the claim took place. In fact, the relevant provisions of the Regulations only require that the cases which arose during the 2014/15 season or later are admissible in accordance with Article 18.1 of the Regulations. The FIVB Agent Regulations entered into force at the end of the 2014/15 season and its purpose was to merely regulate agents in volleyball, not impact the FIVB's jurisdiction related to financial disputes involving agents. Agents had been functioning in volleyball before these regulations were adopted and, thus, the aim of these regulations was merely to regulate their legal status.
25. Additionally, the Claimants asserted that they informed the Respondent that she had a valid contract with them as well as with the Club after the 2014/15 season, which ended on 15 May 2015. Moreover, the Claimants re-emphasised that the Respondent had never effectively revoked the PoA and, thus, her breach is ongoing. Consequently, she is still presently in breach and, therefore, as the facts and circumstances of this dispute are still ongoing, the Claimant's claim is admissible.
26. The Claimants' claim is also not presently time-barred as it has not been more than three (3) years from the date of the last day of the season in which the dispute arose. The Claimants' claim also meets all of the substantive requirements in the Regulations because the Claimants' had the right to use the dispute resolution system and the dispute is of a financial nature with an international dimension.
27. The Claimants also asserted that they have the right to use the financial dispute resolution system based on the FIVB Constitution, which requires persons under the FIVB's jurisdiction, including agents, to refrain from seeking recourse for any dispute outside of the FIVB. It would be unfair for the Claimants to be under the jurisdiction of the FIVB in disciplinary proceedings but not have access to use the FIVB's judicial bodies for their cases.

28. The Claimants also expressed their surprise that the FIVB took more than six months to gather all of the evidence in this case only to make a decision that it lacked jurisdiction. The Claimants were of the opinion that the FIVB should make a decision on competence after receiving the Complaint and, if not, provide the Claimants with a determination at that time.
29. Regarding the merits, the Claimants fully stand by their submissions presented in the proceedings before the FIVB. The Respondent had committed herself to pay liquidated damages in the event that she granted a power of attorney to a third party during the period of the PoA. These damages constituted her damages due to her failure to fulfil her obligations under her PoA. By informing the Club that she was represented by Mr. Alessandro de Lima and, at the same time, not revoking her PoA granted to the Claimants, the Respondent breached the PoA entitling the Appellants to the damages requested.
30. Additionally, the Claimants requested that the FIVB Tribunal Judge request the file from the first instance and requested that a hearing be held allowing the Claimants to testify before the FIVB Tribunal as well as reserving the right to name rebuttal witnesses and file rebuttal witness statements.
31. In their Request for Relief, the Claimants requested the following:
- “1) that the Request for Revision is admissible;*
  - 2) that the Request for intervention is admissible;*
  - 3) that the challenged decision is set aside and this Court rules on the merits of the case by finding that the Respondent is ordered to pay for the Claimants the monetary sum of EUR 100.000,00 of liquidated damages arising from the power of attorney granted by the Respondent to the Claimants;*
  - 4) that the Respondent shall bear the costs of the legal fees and other expenses incurred in connection with the proceedings (including the applicable handling fee and the costs of witnesses and interpreters).”*  
(sic)

#### **4.2 The Respondent's Answer**

32. The Respondent asserted that the Claimants' Request for Review must fail because, as stated in the Decision, it would be unfair and illegal for the Claimants to benefit from the rights obtained through their FIVB License at a time when they did not have said license. The relationship between the Claimants and the Respondent ended well before the Claimants obtained their licenses.

33. Additionally, the Claimants' assertion that the FIVB Agent Regulations do not explicitly provide that an agent must be duly licensed before or during the events giving rise to the claim must also fail because it is a universal principle of law that the Claimants must have obtained the precondition to certain rights under the FIVB Agent Regulations, i.e. obtain an FIVB License, before they can benefit from such rights. They cannot remedy the fact that they did not have a license by obtaining a license at a later date.
34. The Claimants do not satisfy the legal requirements under Article 45.11 of the FIVB Sports Regulations and Article 3(f) of the FIVB Agent Regulations, and, thus, their Request for Review must be dismissed.
35. In her Request for Relief, the Respondent asserted the following:
- "a. Given the above, the Respondent hereby requests the dismissal of the Claimants' Request for Review, with the consequent maintenance of the decision issued by FIVB on June 30, 2016;*
  - b. Alternatively, in case of admission of the Claimants' Request for Review, the Respondent requests the consideration of all her allegations made until this moment, with the further dismissal of the Claimant's Request for Review and Request for Intervention, as well as the dismissal of the Claimants' request for ordering the Respondent to pay the amount of EUR 100.000,00;*
  - c. Alternatively, in case of admission of the Claimants' Request for Intervention, the Respondent requests the declaration by FIVB, in the act of admission of the requested intervention, that the subject matter of this dispute shall be only the amount of EUR 100.000,00, since the payment of such amount for each agent or legal entity does not have contractual protection and is completely forbidden;*
  - d. Alternatively, in case of admission of the Claimant's Request for Review, the Respondent requests FIVB to apply an amount proportional to the period during which lasted the agreement entered into between the parties (from January 5, 2014 until March 2, 2015), as well as the declaration of discharge of the Representation Agreement and the granted Power of Attorney." (sic)*

## **5. Procedural Issues**

### **5.1 Hearing**

36. The FIVB Tribunal notes that the Claimants have requested a hearing in the present dispute in order to present the testimony of the Second Claimant as well as a representative from the Club.

37. Article 20.7 of the FIVB Sports Regulations provides the relevant provisions related to a hearing before the FIVB Tribunal. In particular, Article 20.7.1 of the FIVB Sports Regulations provides that:

*“The Tribunal shall determine at its sole discretion, taking into account the parties’ submissions, whether a hearing is to be held or not...”*

38. Hence, the FIVB Tribunal Judge has sole discretion to determine whether or not to grant the Claimants’ request taking into account the Parties’ respective submissions.
39. Having reviewed the Parties’ submissions and taking into account his holding below, the FIVB Tribunal Judge finds that a hearing is not necessary in the present case. The FIVB Tribunal Judge is sufficiently comfortable determining the threshold issue of jurisdiction based on the written submissions provided by the Parties and, based on his findings described below on the issue of jurisdiction, finds that he does not need to hold a hearing in the present case.

## **6. Jurisdiction**

### **6.1. In general**

40. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. In order to do so, it must look at the relevant provisions of the Regulations.
41. Article 19.2.1 of the Regulations, in relevant part, reads as follows:

*“[t]he FIVB Tribunal is competent to decide financial disputes of an international dimension between clubs, players, licensed agents and coaches from within the world of volleyball...”*

42. Article 19.2.2 of the Regulations stipulates that the FIVB Tribunal can only resolve disputes:

*“19.2.2.1 arising between the natural and legal persons/entities mentioned in Article 19.2.1;*

*and*

*19.2.2.2 decided previously by the FIVB/ a Confederation or referred by the FIVB/ a Confederation to the FIVB Tribunal”*

43. Article 19.2.3 of the Regulations grants the FIVB Tribunal the power to rule on its own jurisdiction.
44. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the FIVB Tribunal Judge shall examine whether the conditions of both Articles 19.2.1 and 19.2.2 are satisfied.
45. The present dispute involves a claim for damages by Polish agents against a Cuban player under the FIVB umbrella. The FIVB Tribunal Judge notes that the agents were originally not included as party able to file a financial dispute under the Regulations but were granted *“access to the dispute resolution system established by the FIVB Regulations”* through the FIVB Agent Regulations (2015), which were subsequently integrated into the Regulations in 2016. This is the first agent dispute to reach the FIVB Tribunal and, thus, the question before the FIVB Tribunal is whether the FIVB and, subsequently, the FIVB Tribunal, has competence to hear claims from an FIVB Licensed Agent if the basis for the claim occurred before said Agent obtained his FIVB License.
46. In his Decision, the FIVB General Director found that he did not have specific competence to decide the present dispute. When examining agent claims he found that three criteria had to be satisfied in order for the FIVB to have specific competence over an agent’s claim: 1) it must be of a financial nature; 2) it must be made by an FIVB Licensed Agent and 3) it must be based on facts and circumstances that occurred during or after the season in which the FIVB Licensed Agent obtained his/her license. The FIVB General Director found that the first two prongs were satisfied but that the Claimants<sup>1</sup> failed to satisfy the last prong and, thus, the FIVB did not have competence to decide their dispute.
47. The FIVB Tribunal Judge first agrees with the Decision that the FIVB has general competence to hear agents’ claims in their individual capacity in light of the promulgation of the FIVB Agent Regulations, the relevant provisions of which came into effect in April 2015. Before that, agents were specifically excluded from the FIVB financial dispute resolution system. The Decision’s analysis of the promulgation of the FIVB Agent Regulations describing that access to the dispute resolution system was a benefit for an FIVB Licensed Agent of obtaining an FIVB

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<sup>1</sup> The Second Claimant obtained his FIVB License after the proceedings before the FIVB had been started and requested to intervene in the dispute. The FIVB General Director also dismissed his Request for Intervention in light of his finding that he was not competent to decide the dispute before him.

License accurately reflects the purpose of Article 14.1(f) of the Regulations<sup>2</sup>. Thus, the present question before the FIVB Tribunal is limited to the specific competence of agent claims, i.e. what criteria does an agent claim have to satisfy in order for an agent to have the access granted by Article 14.1(f) of the Regulations.

48. In examining specific competence, the FIVB Tribunal Judge notes that there is a relationship between Articles 14.1(f) and Article 19.2.1 of the Regulations. Thus, in order to interpret specific competence, the FIVB Tribunal Judge must read these two provisions together in evaluating the requisite criteria in order for the FIVB to have specific competence over agent's financial disputes. Article 19.2.1 of the FIVB Sports Regulations establishes that the FIVB Tribunal has jurisdiction over claims of a financial nature and of an international dimension between either a club, a player, a coach or an FIVB-Licensed Agent. Additionally, Article 14.1(f) provides agents who have acquired an FIVB License have the right to have access to the dispute resolution system established in the FIVB Regulations. The dispute resolution system includes the right to be heard by the FIVB General Director, then file a Request for Review with the FIVB Tribunal and, subsequently, to go to the Court of Arbitration for Sport as described in Section III of the Regulations.
49. Thus, based on the above, the FIVB Tribunal Judge finds that the right to have access to the FIVB financial dispute resolution system is a limited right only for those agents that have obtained an FIVB License. It follows from this that the behaviour, i.e. behaviour regulated by the Regulations and the FIVB License, that could give rise to access to the financial dispute resolution system must also be that of an FIVB Licensed Agent. The FIVB Tribunal Judge agrees with the FIVB General Director that any other interpretation would create a backdoor for unregulated agent dealings to be heard. It is clear from the history of the FIVB Agent Regulations as well as the Regulations that Article 14.1(f) was designed to create a right not previously existing as a benefit for those agents that obtained an FIVB License and the rights and obligations that came from said License.
50. Moreover, the FIVB Tribunal Judge also finds that in order to agree with the Claimants' interpretation of the Regulations, he would have to agree that Article 14.1(f) has retroactive effect. In order for a provision of a regulation to have retroactive effect, it is a general principle of law that the language of said provision must be explicit about its retroactive effect in order

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<sup>2</sup> Article 3(f) of the FIVB Agent Regulations became Article 14.1(f) of the FIVB Sports Regulations when the FIVB Agent Regulations were integrated into the FIVB Sports Regulations.

to put the parties on notice of the full application of the provision.

51. In the present case, there is no explicit language in the Regulations providing for retroactive effect regarding agents' access to the dispute resolution system. Consequently, this provision granting access to the dispute resolution system cannot have retroactive effect.
52. In light of the above, the effect of a combined reading of Articles 14.1(f) and 19.2.1 of the Regulations is that an agent must be licensed both at the time that he accesses the financial dispute resolution system and at the time that the actions giving rise to his claim took place. Hence, FIVB Tribunal Judge finds that a combined reading of Articles 14.1(f) and 19.2.1 of the Regulations establishes the following criteria in order for the FIVB, and, subsequently, the FIVB Tribunal to have jurisdiction over agent claims: 1) the dispute must be of a financial nature and of an international dimension; 2) the agent must be licensed at the time of the filing of his Complaint (or Request for Review) and 3) the agent must also be licensed at the time that the actions giving rise to the claim took place.
53. Applying the above criteria to the present case, the FIVB Tribunal Judge finds that he does not have jurisdiction over the present claim because the Claimants were not licensed at the time that the actions giving rise to the present dispute occurred, i.e. the breach of the PoA. The Claimants' claim is based on the fact that the PoA had not been revoked by the Respondent at the time that she sent letter to the Club on 20 April 2015 designated someone else as her agent, and, thus, breaching the exclusivity clause giving rise to the EUR 100,000 damages claim. Thus, the date in question, in which the Claimants would have to have had their FIVB License was 20 April 2015; however, the Claimants obtained their respective licenses only on 1 December 2015 (First Claimant) and 1 January 2016 (Second Claimant).
54. Additionally, the FIVB Tribunal Judge finds that the Claimants' claim that the PoA has still not been revoked and, thus, the breach is ongoing fails as well. The FIVB Tribunal Judge would be overly formulistic if he held otherwise because it is clear from the Respondent's actions, both through her termination letter and her subsequent letter to the Club on 20 April 2015 informing it that she was represented by another party, that she wished to terminate the Claimants' representation of her despite not sending a formal revocation of the PoA. Therefore, there is no breach that is still ongoing. Consequently, the FIVB Tribunal Judge finds that the Claimants have failed to demonstrate that they were licensed by the FIVB at the time that the actions giving rise to the present claim took place.

55. The Claimants also assert that the FIVB has jurisdiction based on Article 2.1.2.2 of the FIVB Constitution, arguing that because an agent is a person under the FIVB's jurisdiction and said persons are required under Article 1.5.7 of the FIVB Constitution not to seek recourse from civil, judicial or sports authority outside of the volleyball family the FIVB has competence to decide its financial dispute. The Claimants then state that it would be unjustified that they are under the jurisdiction of the FIVB related to disciplinary proceedings but not allowed to use the FIVB judicial bodies for their cases.
56. Having examined this argument, the FIVB Tribunal Judge notes that the provisions of the Constitution cited deal specifically with the jurisdiction of the FIVB in general over members of the volleyball family. However, specific jurisdiction related to financial disputes is governed by the Regulations, which form *lex specialis* for financial disputes. The Claimants' analogy to disciplinary proceedings must fail because whereas disciplinary proceedings are designed to punish a party for violating FIVB Regulations, the FIVB financial dispute resolution system is a service offered by the FIVB. Thus, the FIVB has every right to limit which parties within the volleyball family that it offers this service. The FIVB has chosen to limit access to the dispute resolution system to agents until they obtain a license from the FIVB.
57. Based on the above, the FIVB Tribunal finds that it does not have jurisdiction over the present claim because the actions giving rise to the claim took place before the Claimants obtained their respective FIVB Licenses. Consequently, the FIVB Tribunal Judge finds that he must dismiss their claims due to a lack of jurisdiction.

## **7. Merits**

58. Based on the above determination that the FIVB Tribunal has dismissed the claim based on the lack of jurisdiction, the FIVB Tribunal finds that it does not need to examine the merits of this dispute.

## **8. Costs**

59. Article 20.10.2 of the Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses (including the applicable handling fee) in the proceedings before it. However, legal fees must be reasonable and are limited to fees related to the proceedings before the FIVB Tribunal. When determining the contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and

financial resources of the Parties.

60. The Claimants claims were dismissed due to lack of jurisdiction. Consequently, it must bear the costs of all handling fees paid as part of its Request for Review. Additionally, the FIVB Tribunal Judge finds that no contribution shall be paid to either Party and each Party must bear its own costs as the Respondent failed to request a contribution towards her costs.

### **DECISION**

61. For the reasons set forth above, the FIVB Tribunal Judge decides as follows:

- 1. The Request for Review filed by the Claimants is dismissed due to lack of jurisdiction.**
- 2. Each party shall bear its own legal fees and expenses. The Claimants bear the costs of the proceedings before the FIVB Tribunal.**
- 3. Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 21 June 2017.

Mr. Liu Chi  
FIVB Tribunal Vice-Chairperson

