

EXHIBIT “L”

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

IN THE MATTER OF ARBITRATION BETWEEN:

Piotr Nowak	:	Final
The Claimant/	:	
Counterclaim Respondent	:	Opinion
	:	
v.	:	and
	:	
Pennsylvania Professional Soccer LLC	:	Award
and Keystone Sports and Entertainment	:	
LLC	:	
The Respondent/	:	
Counterclaim Claimant	:	
	:	
v. Pino Sports LLC	:	
Counterclaim Respondent	:	

Re: AAA Case No. 14 120 1200 1589

Before
Margaret R. Brogan, Esquire
Arbitrator

Appearances

For the Claimant/Counterclaim Respondent

Clifford E. Haines, Esquire
Haines & Associates
1835 Market St., Suite 240
Philadelphia, PA 19103

For the Respondent/Counterclaim Claimant

Thomas G. Collins, Esquire
Anthony F. Andrisano, Jr.
Buchanan Ingersoll & Rooney PC
409 N. Second St., Suite 500
Harrisburg, PA 17101

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Background

This matter is premised upon the claims of Piotr Nowak (Claimant or Mr. Nowak), former head coach, manager and Executive Vice President of Soccer Operations for the Philadelphia Union (Respondent or Philadelphia Union), a Major League Soccer Club. In short, the Claimant contended that Respondent terminated him on June 13, 2012 without cause, and in bad faith, contrary to the terms of the parties' Employment Agreement, from which my jurisdiction as arbitrator is based.

To the contrary, Respondent contended that it had cause to terminate the Claimant under the Employment Agreement for specific alleged misconduct. Respondent also has made counter-claims in this proceeding: 1) alleging that the Claimant has failed to reimburse Respondent the remaining monies advanced pursuant to an agreement reached between the Respondent and Pino Sports LLC, Claimant's limited liability company. (The Pino Agreement) Under the Pino Agreement, Claimant had granted his marketing rights to Respondent; and 2) Claimant failed to repay the remaining balance of a loan made to Claimant by Respondent.

Initially, Claimant sought to litigate this matter in the United States District Court for the Eastern District by filing a Complaint on July 20, 2012. Counsel for Respondent filed a Motion to Dismiss the Complaint and Compel Arbitration, as the Employment Agreement has an arbitration clause which governs these

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disputes. On September 26, 2012, the Court issued an Order compelling Claimant to pursue his claims through arbitration. On December 5, 2012, Claimant filed a Demand for Arbitration with the American Arbitration Association, and the undersigned was selected as arbitrator in line with the Association's procedures.

Arbitration hearings were held in this matter on May 28, 29 and 30, 2014, and August 19 and 20, 2014, at which time all parties were granted the full opportunity to present testimonial and documentary evidence in support of their positions. Both sides filed written briefs and reply briefs which were received by the undersigned by December 24, 2014.

On April 21, 2015, I issued the Interim Award in the above matter. In that Interim Award I denied the claims of Claimant and upheld Respondent's counterclaims submitted in this arbitration. I further ordered Claimant to pay amounts owed under the Pino Agreement and the 2011 Extension Employment Agreement. I concluded that Respondent, as prevailing party, was entitled under the employment agreement to attorneys' fees and recoverable costs in connection with this arbitration proceeding, and in connection with Claimant's initial lawsuit against Philadelphia Union in U.S. District Court for the Eastern District and Respondent's successful effort to compel arbitration.

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I further ordered that Respondent submit, within 60 days of its issuance, its fee petition. Respondent did so, through the American Arbitration Association (AAA), requesting a reimbursement of fees and costs totaling **\$454,258.89**, providing a redacted copy of its supporting documents to the Claimant and an unredacted copy to the arbitrator for *in camera* inspection. Claimant was advised of this in Respondent's June 19, 2015 fee petition. For months, Claimant did not respond to the fee petition or the issue of the redacted documentation. Through AAA, I set a final deadline of October 2, 2015 for response. On October 6, 2015, Claimant requested an extension of that deadline, which I granted.

On October 6, 2015, Claimant responded to the fee petition, stating that the unredacted copies make it impossible for Claimant to assess the reasonableness of the Respondent's request, and indicating that Respondent has not met its burden of providing evidence in support of the reasonableness of its time entries. Claimant seeks a denial of the fee petition, in essence arguing that Respondent is not entitled to the full remedy it seeks under the employment agreement.

I then ordered the parties to respond to the following by October 23, 2015: 1) Claimant's position regarding whether the arbitration Award in this matter should remain confidential, and its position regarding the arbitrator's viewing of the redacted fee petition documentation *in camera*; 2) Respondent's position regarding Claimant's objection to its fee petition, including explaining in

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detail why the items redacted are subject to privilege; and 3) an order that my April 21, 2015 invoice be paid immediately. That invoice reflected work I performed prior to the study and issuance of this Final Award, and I advised the parties, who were asking me to perform work under the employment agreement, that I viewed the failure to pay the \$8,100 to be a breach of said employment agreement. As of the date of this Final Award, that amount has not yet been paid. Despite this failure to pay, I view it as my obligation to issue this Final Award. The American Arbitration Association, in line with their rules, has billed the parties, collected monies from the parties and sent reminders to the parties regarding my fees. In accordance with AAA rules, the arbitrator has not been involved in this process.

On October 23, 2015, Respondent responded to my Order on the issue of redaction, outlining argument as to why an *in camera* inspection by the arbitrator was appropriate in order to protect the attorney-client privilege, and further contending that the documents provided Claimant provided enough specificity so that Claimant could adequately evaluate the fee petition.

Claimant did not respond to my Order within the October 23, 2015 deadline. Without requesting an extension, Claimant provided AAA its response on October 26, 2015. Despite its lateness, and over the objection of Respondent, I considered Claimant's October 26, 2015 submission. In that submission, Claimant points out that Respondent has the burden to prove that its

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request for attorneys' fees is reasonable. Claimant argues that the fee petition must be specific enough to show that the hours spent were reasonable; according to Claimant, the redacted copies do not provide Mr. Nowak the opportunity to challenge the reasonableness of the prevailing party's bill. Claimant does not address the issue of the ability of the arbitrator to review the fee petition documentation *in camera*, as I requested the parties to address. Claimant indicates that it has no objection to the continued enforcement of he confidentiality agreement, nor does he object to the confidentiality of the Award.

DISCUSSION

First, both parties are in agreement that the November 14, 2013 Protective Order remains in effect. Accordingly, I rule that the confidentiality order remains in effect indefinitely and extends to the Awards issued in this matter, unless the release of said Awards is mandated by law and/or ordered by a Court.

Second, I shall consider the fee petition. The Claimant has no objection to costs requested by Respondent, so the reimbursement of costs requested in the fee petition in connection with these arbitration proceeding as well as Respondent's defense of Claimant's lawsuit before the U.S. Eastern District Court and Respondent's successful efforts to compel arbitration in that proceeding shall be so ordered.

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As to attorneys' fees, I agree with the Claimant that Respondent has the burden of establishing that its request is reasonable and that documentation should be provided with specificity. *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990).

In his submissions, the Claimant did not speak directly to the issue of whether the arbitrator could evaluate the reasonableness of the fees requested and the specificity of the underlying documentation *in camera*, nor did Claimant provide any authority that I lack the jurisdiction to do so. Respondent here has provided a compelling explanation as to why it has provided redacted documentation regarding the attorneys' fees sought. First, it argues that the redaction and *in camera* inspection preserves the attorney-client privilege which is necessary given that Claimant has already appealed the Interim Award in this matter, so the parties are involved in ongoing litigation involving the same issues as was presented in this arbitration. Second, Respondent has persuasively argued that it provided the following which provides Claimant with sufficient specificity: 1) the date of the legal work performed; 2) the attorney performing each task; 3) the number of hours expended by each attorney on a task; and, 4) in accordance with the Uniform Task-Based Management System, the Activity and Task Codes associated with each specific billing entry.

Therefore, I found it within my authority to conduct an *in camera* inspection, and I did so. I find, based upon my review of the underlying

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documentation, that the attorneys' fees requested by Respondent in connection with the work performed by the law firm of Buchanan Ingersoll & Rooney to be reasonable and I shall order all fees and costs of the Buchanan law firm which are the subject of this fee petition be reimbursed, which is in the amount of \$381,317.00 in fees and \$20,910.11 in costs.

Respondent also requests fees incurred in connection with Respondent's efforts in compelling arbitration before the U.S. District Court for the Eastern District, in response to the Claimant's lawsuit, said work being performed by the law firm of Duane Morris. The documentation provided the arbitrator includes some redaction, without explanation. I performed a line-by-line review and arithmetic analysis and note that the fees and costs sought by Respondent in its fee petition coincide with those entries which were provided to me in unredacted form, and Respondent made no claims over and above those unredacted entries. Therefore, Respondent did not seek reimbursement for work reflected in the redacted entries. The unredacted entries support the Respondent's burden of demonstrating reasonableness and specificity for the amount sought. Accordingly, I find that the amount sought of \$52,031.78 in fees and costs to be appropriate and I shall order reimbursement of that amount.

In line with the above discussion, the following is my final award in this matter.

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EMPLOYMENT ARBITRATION TRIBUNAL

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Piotr Nowak
The Claimant/
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v.

Pennsylvania Professional Soccer LLC
and Keystone Sports and Entertainment
LLC
The Respondent/
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v. Pino Sports LLC
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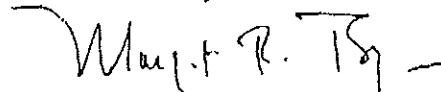
FINAL AWARD OF THE ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been duly sworn and having duly heard the proofs and allegations of the parties, **HEREBY ORDERS** as follows:

- 1) The Protective Order of November 13, 2013 shall remain in effect indefinitely and extends to the Awards issued in this arbitration matter, unless the release of said Awards is mandated by law and/or ordered by a Court.
- 2) The Claimant is hereby ordered to reimburse Respondent for attorneys' fees and costs incurred in this arbitration proceeding, **in the amount of \$381,317.00 in fees and \$20,910.11 in costs.**
- 3) The Claimant is hereby ordered to reimburse Respondent for attorneys' fees and costs incurred in defending the lawsuit filed by the Claimant in the U.S. District Court for the Eastern District and successfully compelling arbitration, **in the amount of \$52,031.78 in fees and costs.**
- 4) To date, Claimant is responsible for **\$12,450.00**, and Respondent is responsible for **\$4,050.00** in administrative fees and expenses of the American Arbitration Association. The outstanding compensation owed to the Arbitrator is **\$11,700** and is due and owing in accordance with the employment agreement.

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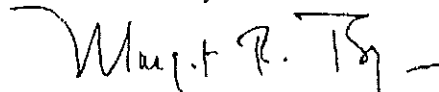
6) This Award is final and is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are, hereby, denied.



November 5, 2015
Date

Margaret R. Brogan

I, Margaret R. Brogan, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.



November 5, 2015
Date

Margaret R. Brogan