

## **Decision of the National Anti-Doping Disciplinary Panel.**

**Case Ref: NADDP 05/2016**

**Anti-Doping Commission (Malta)**

**-vs-**

**GORDON DIMITRI (Athlete member of  
the Ghaqda Regatta Nazzjoni u Qdif  
lehor with Maltese Identity Card No  
246975M)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi as Chairperson, and Dr. Aaron Formosa as member.

Before the commencement of this proceeding, Dr. Aaron Formosa M.D. declared to the Chairperson that he is not subject to any circumstance or conflict that could negatively affect his impartiality in the case under review. The same declaration was made by the Chairperson to the 'Panel'. Furthermore, the parties to the case declared that they have no objection that the case is heard and decided by two members of the Panel rather than three.

### **1. Preliminaries**

Considered the Request by the National Anti-Doping Commission (Ref. No. ITSTGORDIM-15/12) of the 9th of October, 2015 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Gordon Dimitri of the Anti-doping Regulations (Legal Notice 17 of of 2015, Sports Act, L.N. 17 of 2015, Laws of Malta).

Took note and reviewed the following documents that were forwarded to the Panel at the initial stage by the Coordinator of the Anti-Doping Programme, namely:

- (i) The request to the Panel to schedule a hearing dated 9th October, 2015 (ADC17a);
- (ii) The request by NADO to the National Association/Federation of the alleged breach by Gordon Dimitri dated 5th October, 2015 (Doc ADC14a);
- (iii) Letter of Notification by NADO to Gordon Dimitri of a possible violation of the Anti-Doping Rules dated 5th October, 2015 (Doc ADC12a);
- (iv) A copy of the Doping Control Officer Report Form filed by NADO following the doping test and other documents relating to the participation of Gordon Dimitri, on the 8th of September, 2015 (Doc ADC1 to ADC6);
- (v) A copy of the Analysis Report dated 5th October, 2015 (Doc ADC8);
- (vi) A copy of the Report of Adverse Analytical Finding (Doc ADC9).

Took note of the Notice issued by the Panel to Gordon Dimitri to appear before the Panel on the 11th of February, 2016 and of the subsequent hearing held on the 4th of March, 2016 to deal with the accusation based on Article 3(2)(a) and (b) of L.N 17 of 2015 of the Laws of Malta:

- " (2) *The following constitute anti-doping rule violations:*
- (a) *the presence of a prohibited substance or its metabolites or markers in an athlete's sample:*

(b) *the use or attempted use by an athlete of a prohibited substance or a prohibited method."*

Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the 'Ghaqda Regatta Nazzjonali u Qdif lehor' and Malta Sports Council.

## **2. Merits:**

2.1 Present at the sittings - Gordon Dimitri assisted by his lawyer Dr. Albert Zerafa and Dr. Christina Borg Cardona and Dr. Lucienne Attard on behalf of the NADO.

2.2 The substance recorded in the Analysis Report of the urine 'A' sample of Gordon Dimitri In-Competition, were 'Cocaine' a stimulant and 'Drostanolone' and 'Nandrolone' both Anabolic Agents. There was no request for testing the 'B' sample.

2.3 **Gordon Dimitri** gave evidence and testified that he had not participated in the previous three Regatta competition before the one on the 8th of September, 2015 and he was attending at the gym and made use of the substances of Nandrolone and Drostanolone which resulted from the doping testing. He declares that he had stopped taking these substances about 8 weeks and a half before the Regatta of the 8th of September 2015. Mr Dimitri declared that he did not take the substance with the intent to perform in the Regatta because he knew that these substance were not accepted but he made up his mind to participate for the Regatta 5 weeks before the competition and did not think that the substances which were taken weeks before would still mark in the doping test.

Dr. Zerafa has declared on behalf of the athlete that Mr Dimitri is not contesting the result of the test but he is only admitting taking two of the substances namely Nandrolone and Drostanolone.

### 2.4 Final Oral Submissions:-

Dr. Albert Zerafa submits that this case is subject to Article 11(2)(a)(i) of the L.N. 17 of 2015 and therefore the athlete has to prove that he had no intention to make use of the substances resulted in the doping testing. He argues that it resulted that the athlete had no intention to participate in the Regatta and therefore this demonstrates that he had no intention to cheat. Dr. Zerafa makes reference to the word 'intentional' under sub-article (2) and (3) whereby he argues that these articles are intended to target those athletes who make use of any substances with the intention to cheat. He argues that in this particular case when the athlete made use of these Steroids, he had no intention to participate and was making use of such substance when attending the gym. Therefore, he argues that this demonstrates that he had no intention to cheat. Furthermore, Dr. Zerafa submitted that with reference to the the use of 'Cocaine' the other substance found in the athlete's body, the athlete did not admit to this but if the Panel was to apply a sanction this should not be more than 2 years because the the athlete has proved that the other two substances were not taken with the intention to cheat whilst the substance of 'Cocaine' has a two-year suspension.

Dr. Lucienne Attard submits that in respect of the substance referred to as 'Cocaine' which is not a specified substance, the law stipulates a 4 year sanction. She argues that according to the Prohibited List this substance is considered as a non-specified substance.

## **3. Considerations:**

3.1 In this case the athlete is not contesting the result emerging from the doping control test and therefore there is no issue on the merits of the case which result from the documents exhibited and in particular from the Analysis Report (Doc ADC8).

3.2. The Panel makes reference to the Article 3(2)(a) of L.N. 17 of 2015 of the Laws of Malta whereby the legislation stipulates that:

*“it is each athlete’s personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under sub-regulation (2)(a)”*

Therefore, when the doping test identifies a prohibited substance in the body of the athlete, the burden of proof shifts onto the athlete who has to rebut to this evidence. In this case the Panel is not satisfied with the justification brought up by the athlete because as the law stipulates the athlete is responsible for what enters in his/her body and therefore at the moment Mr Dimitri has decided to take part in the competition, he is responsible to make sure that no prohibited substances is present in his body and the reason expressed by the athlete to make use of such substance does not justify the presence of such substance. In this case, the athlete willingly made use of the prohibited substance resulting in the doping test and therefore the moment he decided to participate in the Regatta he knew there was a significant risk that such action might constitute in an anti-doping rule violation. On the basis of this argument the Panel makes reference to Definitions arising from Article 3(2)(c) L.N. 17 of 2015 which stipulates that:

*“(c) as provided for in sub-regulations (2) and (3), the term “intentional” is meant to identify those athletes who cheat. The term, therefore, requires that the athlete or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition shall be rebuttably presumed to be not “intentional” if the substance is a specified substance and the athlete can establish that the prohibited substance was used out-of-competition. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition shall not be considered “intentional” if the substance is not a specified substance and the athlete can establish that the prohibited substance was used out-of-competition in a context unrelated to sport performance.”*

Thus, the Panel is convinced that the athlete did not prove to the satisfaction of the Panel that there was no intention on his part to violate the anti-doping regulations. Hence, as stipulated under the L.N. 17 of 2015, since Nandrolone is an anabolic steroid and Drostanolone is an anabolic agent, both classified as Anabolic Agents under S.1 of the Prohibited List, the sanction applicable in these cases is that envisaged for Non-Specified Substance under Article 11 (2) (a) and therefore a 4 year ban.

3.3 Moreover, in respect to the legal arguments brought up by the defence counsel in relation to what are Specified and Non-Specified substances, the Panel makes reference to the anti-doping regulations which stipulate that there are either substances which are considered as ‘Specified Substances’ or ‘Non Specified Substance’ and in relation to this distinction L.N. 17 of 2015 of the Laws of Malta under Article 5 (3) provides that:

*“For the purposes of the application of sanctions on individuals, all prohibited substances shall be specified substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the prohibited list. The category of specified substances shall not include prohibited methods.”*

This article provides that all prohibited substances are considered as specified substances except prohibited methods, anabolic agents and hormones, stimulants and hormone antagonists and modulators found in the Prohibited List 2015. Hence, the Panel shall make reference to the Prohibited List 2015 to identify those substances which are non-specified substances. S.6 dealing with Stimulants specifies a list of Non-Specified Stimulants and in particular this list includes "cocaine". Therefore, when referring to cocaine it is clearly stated that according to the Prohibited List 2015 which is recognised by L.N. 17 of 2015 of the Laws of Malta, 'Cocaine' is considered as a stimulant which is classified as 'Non-Specified Substance'.

Therefore, when L.N. 17 of 2015 of the Laws of Malta is read in conjunction with the Prohibited List, it emerges that those substances which are expressly referred to in the Prohibited List shall not be considered as Specified Substances but are classified as Non-Specified Substances.

In this case when dealing with the substance found in the athlete's urine sample, namely 'Cocaine', the substance is a Non-Specified Substance and thus the applicable sanction in this case is a 4 year ban as envisaged under Article 11 (2) (a) of L.N. 17 of 2015 of the Laws of Malta.

#### **4. Decision**

Therefore on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that:

4.1 Gordon Dimitri has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(a)] and (Art. 2.1) as the presence of a prohibited substance or its metabolites or markers has been found in the athlete's urine sample A that had been collected from him on the 8th September, 2015.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (2) (a) of the Anti Doping Regulations, 2015 and Art. 10.2.1 of the WADA Code is imposing on the athlete Gordon Dimitri a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of his provisional suspension if there was one. Otherwise the period of ineligibility is to start running from the date of this decision.

4.3 A copy of this decision is to be forwarded to the Malta Regatta Association (Ghaqda Regatta Nazzjonali u Qdif Iehor).



Dr. Maria Azzopardi B.A. LL.D. LL.M (Sports Law)  
Chairperson



Dr. Aaron Formosa M.D.  
Member

This 24th day of March 2016

At Cospicua, Malta