

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 06/2016

Anti-Doping Commission (Malta)

-vs-

**CHARLTON ABELA (Athlete member of
the Ghaqda Regatta Nazzjoni u Qdif
lehor with Maltese Identity Card No
319681M)**

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. ITSTCHAABE-15) 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 Charlton Abela of the Anti-doping Regulations (Legal Notice 17 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 (ADC16a);
- (ii) The request by NADO to the National Association/Federation of the alleged breach by Charlton Abela dated 5th October, 2015 (Doc ADC13a);
- (iii) Letter of Notification by NADO to Charlton Abela of a possible violation of the Anti-Doping Rules dated 5th October, 2015 (Doc ADC11a);
- (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 Charlton Abela, 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 Charlton Abela 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 - Charlton Abela 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 Charlton Abela In-Competition, is 'Cocaine'. There was no request for testing the 'B' sample.

2.3 Witnesses produced:-

Neville Schembri produced by the defence counsel gave evidence and testified that he was the Doping control Officer. He explained that urine sample were collected in accordance with the standard procedures. Athletes enter in the Doping Control Station selected for that event, we check their particulars and the athletes produce the urine sample and the containers are handled by the athlete himself. When the container is closed by the athlete and sealed in a bag we pass the samples to Ignatius Zammit who is in charge with the transportation. The witness confirmed that the kit for the testing is selected by the athlete and handled by him from the beginning till it is completely sealed. Neville Schembri does not recall any particular problem with the containers and when asked by the defence counsel whether the athlete had lamented that the container was not completely closed, the witness denies that the container wasn't completely closed or sealed.

Ignatius Zammit produced by the defence counsel gave evidence and testified that he was at the event on the day the samples of urine were taken. My involvement is to be present when the athlete is targeted and taken to the Doping Control Station. After the sample is sealed this is passed on to me to take care to send the container abroad for testing through a Courier, in his case it was the Airswift UPS. When I receive the samples I sign on the Chain of Custody Form to confirm that the samples are closed and sealed. In the event that the laboratory in charge for testing the sample receives a container with the urine sample which has any defect or any irregularities, the laboratory immediately notifies us explaining what is this defect or irregularity. In this case we received no such notification.

Charlton Abela gave evidence and testified that he has been rowing in the Regatta for the past 16 years. He explains that on the 8th of September, 2015 he was taking a medication called Co-Codamol for tooth-aching. He explained that there is no need for the doctor's certification because this medication is bought over the counter from a pharmacy because they are like Panadols and he had taken 2 in the morning, afternoon and evening a week before and on the day of the event. When asked why he did not mention this medication in the Doping Control Form, he replied that he thought that he had to write substances which may be supplements such as proteins. When asked why he did not mention anything in the Doping control Form in relation to the alleged defect on the container, he replied that he has asked the person that was with him during the testing and this person has asked another person who told him that there was no problem and the container was ok. Charlton Abela denies taking Cocaine and reaffirms that he had only taken Co-Codamol.

Dr. Aaron Formosa, Panel Member, when presented with the Co-Codamol by the defence counsel explained that the components of this medicine are not related to the substance found in the urine

sample. It contains components of Codein and Paracetamol. Codeine is different from Cocaine and the former is not a stimulant and therefore it is not a prohibited substance.

2.4 Final Oral Submissions:-

Dr. Albert Zerafa submits that the testimony of Charlton Abela is clear whereby he denies taking the substance of which he is being accused and according to his testimony it results that the container was not sealed properly and this could have caused contamination. Without prejudice to this, Dr. Zerafa also submits that Article 11 (2) (a) (i) refers to non-specified substances and in this case the substance found in the athlete's body is not listed as non-specified substance. He argues that a substance which is not classified as Specified substance under the anti-doping regulations and prohibited list should not automatically be considered as a non-specified substance. Therefore he argues that since there is no clear indication in the regulations that the substance found in the urine sample of Charlton Abela being Cocaine is classified as a non-specified substance, it should not be classified as a non-specified substance. Hence, Article 11 (2) (a) (i) does not apply in this case and the athlete shall be eligible if found guilty to a suspension of two years under Article 11 (2)(b).

3. **Considerations:**

3.1 The Panel feels that the argument raised by the defence counsel in relation to the allegation that the container was not properly sealed and therefore the urine sample might have been contaminated was not sufficiently proven. The Panel is convinced that there was no irregularities or defects in the container or seal of the athlete's urine sample and that all procedural rules for sample collection were respected since the laboratory did not indicate any defects or problems with the container, seal or anything in relation to the kit used for the sample collection.

3.2. The Panel has no doubt that the results from the sample collection of Charlton Abela are correct and the documents exhibited prove that Cocaine was present in the athlete's urine sample collected on the 8th of September, 2015. In this respect the Panel makes reference to Article 3(2) (i) of L.N. 17 of 2015 of the Laws of Malta whereby it is stipulated that "*it is each athlete's personal duty to ensure that no prohibited substance enters his or her body...*" and therefore it is the athlete's responsibility to provide sufficient evidence to rebut the results of a regular sample testing. In this case the Panel feels that no such evidence has been provided and therefore the deems that the result of the test is a positive one.

3.3 The Panel will deal with the legal arguments brought up by the defence counsel in relation to what are Specified and Non-Specified substances. In anti-doping regulations 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 that 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 Charlton Abela 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 Charlton Abela 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 lehor).



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