

**At the National Swimming Pool Complex  
Msida, Malta**

**Decision of the National Anti-Doping Appeal Panel**

**Appeal Case Reference: 01/2016/NADAP**

**Between**

**Charlton Abela  
(ID Card No 319681M- Rower - Ghaqda Regatta Nazzjonali) – (Appellant)**

**Vs**

**Anti-Doping Commission (Malta) – (Respondent)**

The National Anti-Doping Appeal Panel (hereinafter referred to as the 'Appeal Panel' made up of the following:

- Dr Carmel Cascun BA FCII MJur LLD – Chairman
- Dr Marisa Cassar BPharm, MBA, PhD – Member
- Dr Chris Bonett BA LLM LLD – Member
  
- Ms Kristina Pavia acted as Secretary

Before the commencement of the appeal proceedings Dr Marisa Cassar and Dr Chris Bonett declared to the Chairman that they are not aware of any circumstance or conflict which could negatively affect their impartiality with respect to any of the parties involved in this appeal. A similar declaration was made by the Chairman.

**1. Preliminaries**

- 1.1 The request to convene the Appeal Panel by the NADO was made on the 15<sup>th</sup> April 2016 following receipt of an Appeal Petition filed by Dr Albert Zerafa on behalf of the Appellant on the 13<sup>th</sup> April 2016.
- 1.2 The Appeal Petition was filed subsequent to the decision handed down against the athlete Charlton Abela on the 24<sup>th</sup> March 2016 by the National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'First Panel').
- 1.3 The Appeal Panel when considering this appeal principally took note of the following documents which form part of the process file:
  - (a) Authorisation Letter issued by the NADO on the 8<sup>th</sup> September 2015 to carry out 'in-competition urine test' (test Mission Code:IC008/15);
  - (b) Doping Control Form duly complete and signed by the athlete and the doping control officer on the 8<sup>th</sup> September 2015;
  - (c) Chain of Custody Form showing delivery to UPS, Malta (Arrosswift) on the 9<sup>th</sup> September 2015;
  - (d) Email message from Dr Manolis Lyris PhD of the Olympic Athletic Center of Athens 'Spyros Louis' on the 5<sup>th</sup> October 2015 stating that "The samples were received at the Laboratory on the 10/09/2015, in good condition and sealed properly" also containing Analysis Report No. 13165\_2 which states *inter alia*:  
Event/Status of Control: In-Competition Testing



Federation: NADO of Malta

Date of Reception: 10/09/2015

Chain of Custody Status: According to WADA specification

Sample Code: A472995

Sex: Male

Result: AAF (i.e Adverse Analytical Finding)

Substance identified: Cocaine

Note: Cocaine is a stimulant. The presence of a) benzoylecgonine, b) ecgoninemetylester, cocaine metabolite was confirmed at the above sample.

- (e) Notification of Analytical Finding (Ref No. 2TSTCHAABE-15/2) by the Chairperson Anti-Doping Commission on the 05/10/2015 to the athlete Charlton Abela. The athlete was also informed that a prohibited substance was detected in his sample. He was also given the option to analyse Sample 'B';
- (f) Report of Adverse Analytical Finding issued by the NADO Malta (Ref no. 2TSTCHAABE-15/3) stating that the prohibited substance identified in the 'A' Sample was cocaine;
- (g) Letter of the Chairperson ADC (Malta) on 05/10/2015 to the President Ghaqda Regatta Nazzjonali informing him, amongst others, that the laboratory report indicates the presence of cocaine in the urine sample collected from Charlton Abela, an athlete affiliated with the Marsa Regatta Club, and that his Association should provisionally suspend the athlete with immediate effect. (Ref no, 2TSTCHAABE-15/6);
- (h) Letter by the Chairman and Secretary of the Ghaqda Regatta Nazzjonali to the Secretary Marsa Regatta Club on the 6<sup>th</sup> November 2015 advising them of Charlton Abela's provisional suspension with an invitation for Charlton Abela to attend a Provisional Hearing on Tuesday the 17<sup>th</sup> November 2015 at 6pm at SportMalta, Cottonera Sports Complex;
- (i) Copies of unsigned and undated Letter of Acceptance for Provisional Suspension and Request for Provisional Hearing which were sent to Charlton Abela;
- (j) Letter from the Ghaqda Regatta Nazzjonali to the Chairperson, Anti-Doping Commission on the 17<sup>th</sup> November 2015 wherein it was reported that Charlton Abela did not attend the provisional hearing. The athlete Charlton Abela was provisionally suspended from taking part in any rowing activities/competitions/ training until a final decision was made by the NADO's Disciplinary Board;
- (k) The minutes, including the evidence given, at the two sittings before the First Panel on the 11<sup>th</sup> February 2016 and 4<sup>th</sup> March 2016;
- (l) The decision delivered by the First Panel on the 24<sup>th</sup> March 2016 which, in its final conclusion, states:

Quote;

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

*4.1 Charlton Abela has breached the Anti-Doping Regulations 2015 [Art3(2)(a)] and [Art2.1] as the presence of a prohibited substance or its metabolites or markers has been found in the athlete's urine sample 'A' that has been collected from him on the 8<sup>th</sup> 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.*

Unquote



- (m) The Appeal Petition filed by Av Albert Zerafa acting for the athlete Charlton Abela on the 13<sup>th</sup> April 2016 mentioned various grounds for appeal which will be dealt with, where applicable, when this Panel will be considering the merits. Furthermore the appellant's defendant asked this Appeal Panel to cancel and revoke the decision handed down by the First Panel on the 24<sup>th</sup> March 2016 when the appellant was found guilty of ingesting cocaine substance or alternatively to modify the sentence by imposing a reduced punishment within the parameters of the WADA 2015 Regulations.
- (n) The Anti-Doping Commission (ADC) through Av Christina Borg Debono filed their reply to the appellant's Appeal Petition on the 27<sup>th</sup> June 2016. The arguments raised by the ADC will be dealt with, where applicable, under the merits section of this decision. The ADC asked this Appeal Panel to confirm the decision delivered by the First Panel on the 24<sup>th</sup> March 2016.
- (o) The notices of the Hearing of Appeals dated 15/06/2016 and then 13/07/2016 which appointed the appeal hearing for the 1<sup>st</sup> August 2016 due to the unavailability and/or other commitments of the athlete's counsel.
- (p) The minutes of the proceedings before the Appeal Panel on the 1<sup>st</sup> August 2016 including the oral submissions made by the counsels of both parties and the evidence given by Mr Ignatius Zammit and the athlete Charlton Abela. The Appeal Panel exceptionally accepted the Appellant's request for Mr Zammit and Mr Abela to give evidence again even though they had tendered their evidence before the First Panel. This was not objected to by the ADC.

1.4 An appeal hearing was held on the 1<sup>st</sup> August 2016 at 4pm at the National Swimming Pool Complex Msida. Thereafter the Appeal Panel adjourned to discuss and decide the Appeal 'in camera'.

## 2. The Merits

- 2.1 The Athlete Charlton Abela was subjected to an anti-doping control test on the 8<sup>th</sup> September 2015 (Sample no.472995) In the Doping Control Form dated the 8<sup>th</sup> September 2015 the athlete declared that he was taking what he described as 'Vitamin B'.
- 2.2 The urine samples were dispatched from Malta to the Laboratory of the Olympic Athletic Center 'Spyros Louis' in Athens by UPS Couriers (Arrowswift) on the 9<sup>th</sup> September 2015. The Doping Control Laboratory in Athens confirmed receipt of the samples on the 10/09/2015 "in good condition and sealed properly".
- 2.3 The Analysis Report issued by the Laboratory Director Dr Manolis Lyris PhD for Sample Code no. A472995 showed that the presence of cocaine substance in the athlete's urine sample.
- 2.4 The athlete Charlton Abela, apart from being duly notified of the adverse analytical finding, he was also given the opportunity to request the analysis of Sample B at his expense which he did not request within the time allowed.
- 2.5 Whilst Charlton Abela was provisionally suspended by the Ghaqda Regatta Nazzjonali on the 6<sup>th</sup> November 2015, he also failed to attend a provisional hearing scheduled for the 17<sup>th</sup> November 2015.
- 2.6 During the Appeal Proceedings the Appellant's counsel queried the transport custody and procedure of the samples' journey from Malta to the accredited laboratory in Athens. However no irregularities were found to have taken place. Apart from the fact that the ADC followed the established practice and custody chain permitted by the WADA, the Athens Laboratory confirmed that the samples were received in good condition and sealed properly.





- 2.7 On the basis of the foregoing the Appeal Panel has no doubt that the athlete Charlton Abela has committed an anti-doping violation in terms of Reg 3 [and specifically Reg 3(2)(a)] of the Anti-Doping Regulations, 2015 (LN17/2015). Moreover Reg 3(2) of LN17/2015 provides 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"* and which continues by *"Accordingly it is not necessary that intent, fault or 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)"*.
- 2.8 The substance found in the urine Sample 'A' of the athlete Charlton Abela was analysed and tested at the Olympic Athletic Center of Athens as being Cocaine' ( with the note: Cocaine is a stimulant. The presence of a) benzoylecgonine, b) ecgoninemethylester, cocaine metabolites was confirmed at the above sample), According to the WADA 2015 Prohibited List (and also the WADA Prohibited List of January 2016) 'cocaine' is a prohibited substance 'in-competition' falling within the class of 'non-specified stimulants'.
- 2.9 Whilst the athlete has denied the consumption or taking of the prohibited substance, he provided no proof or collaboration evidence whatsoever to establish how possibly the prohibited substance was found in his body and/or that the anti-doping violation was not intentional. The Appeal Panel observes that not only the athlete did not attend the provisional hearing scheduled by the Ghaqda Regatta Nazzjonali where he could have defended his position at outset, but he also renounced his right to have the 'B'Sample tested.
- 2.10 At the time when the sample was taken from Charlton Abela on the 08/09/2015, the athlete only disclosed that he was taking 'Vitamin B'. Later the athlete explained that he was taking a preparation called Co-Codamol because of some toothache. Apart from the fact that this should have been declared by the athlete on Doping Control Form (in addition to considering obtaining a Therapeutic Use Exemption), this does not explain the presence of the prohibited substance in the athlete's body.
- 2.11 The Appeal Panel is of the opinion that the athlete did not produce any evidence to comfortable satisfaction of the Panel that the athlete did not intentionally ingest the prohibited substance. Also the fact that the prohibited substance might have been taken prior to the competition it is still to be regarded as being taken in-competition since its presence (and therefore also its effects) was established in-competition.
- 2.12 The counsel of the appellant apart from denying the ingestion of the prohibited substance by his client without prejudice to this first stance, he also complained that the First Panel did not give any consideration that the breach of the anti-doping regulations was unintentional. Apart from the fact that the Appeal Panel cannot avoid remarking that one may view these as being somewhat contradictory, in a situation where the onus of proof rests on the athlete who tested positively for doping, no proof whatsoever was put forward by the athlete in support of his lack of intention.
- 2.13 In relation to the previous paragraph, the appellant's counsel also challenged the application of Reg 11(2)(a) of LN17/2015 relied upon by the First Panel when deciding the period of ineligibility imposed upon the athlete Charlton Abela. In this respect the Appeal Panel observes two things. Primarily the anti-doping violation of Charlton Abela cannot be regarded as being a non-intentional one, since as already stated no substantiation to this effect was established by 'the athlete or other person' as per sub-regulation 11(2)(a) (i) in LN17/2015. Secondly the anti-doping violation being delved into here involves a non-specified substance. And therefore in the Appeal Panel opinion the period of ineligibility of four (4) years according to Reg 11(2)(a)(i) applies, and not two (2) years ineligibility as per Reg 11(2)(b).
- 2.14 For completeness sake although Sub-Reg 11(2)(c) provides that: *"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*”, again this provision cannot be applied here because the athlete did not produce any evidence that the prohibited substance was used by him out-of-competition in a context unrelated to sport performance. To the contrary the athlete’s main trust was based on a denial of prohibited substance consumption with a subsidiary argument based on non-intention.

### 3. The Decision

Therefore on the basis of the foregoing the National Anti-Doping Appeal Panel determines this appeal:

- By rejecting the appeal filed by the Appellant on the 13<sup>th</sup> April 2016, and
- By confirming the findings and decision of the National Anti-Doping Disciplinary Panel (Case reference NADDP 06/2016) of the 24<sup>th</sup> March 2016 wherein it was held that the athlete Mr Charlton Abela had violated Regulation 3(2) of the Anti-Doping Regulations 2015 (LN17/2015 – Sports Act Chapter 455, Laws of Malta) with the imposition of a period of ineligibility from any sports activities for a period of four (4) years in terms of Regulation 11(2)(a) (LN17/2015) which period of ineligibility commencing from the date of Charlton Abela’s provisional suspension on the 6<sup>th</sup> November 2015.



Dr Carmel Cascun  
Chairman



Dr Marisa Cassar  
Member



Dr Chris Bonett  
Member

This 31<sup>st</sup> day of August 2016

At Msida, Malta