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FINA Doping Panel 05/10

FINA Doping Panel

comprised of

F.D. van Heijningen	(NED)	Chairman
William Bock III	(USA)	Member
Farid Ben Belkacem	(ALG)	Member

In the proceedings against

the water polo player **Matthew Zammit**
affiliated to the Aquatic Sports Association of Malta

not present at the hearing.

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, inter alia, a doping control program, both for in-competition as well as out-of-competition testing.

1.2. The Aquatic Sports Association of Malta (ASAM) is a member of FINA. ASAM is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Code ("FINA DC"). The FINA DC is directly applicable to and must be followed by Competitors, Competitor Support Personnel, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the ASAM. These Rules also apply to any athlete under the authority of the Ligue Européenne de Natation (LEN).

1.3 Mr. Matthew Zammit is a 23-year old male water polo player. He is a member of the Maltese Water Polo National Team.

II THE PROCEEDINGS

2.1 On 31st May 2010, FINA notified Mr. Zammit, as well as his national federation, about an adverse analytical finding for the substance Stanozolol (Class S.1.a Anabolic Agents Steroids). Therefore, as per FINA Rules DC 7.1.2, 7.1.3, 7.1.4 and 7.1.5, he was requested to provide a Therapeutic Use Exemption (TUE) and asked whether or not he wanted to have a B-sample analysis.

2.2 On 11th June 2010, Mr. Zammit's lawyer informed FINA that his client accepted the results of the A-sample but wanted to explain the circumstances that led to this matter.

2.3 On 22nd June 2010, FINA informed Mr. Zammit that his case was forwarded to the FINA Doping Panel according to the Rule C 21.5.

2.4 On the same day, FINA notified the athlete about the decision made by the FINA Executive to impose a provisional suspension from 22nd June 2010 in accordance with FINA DC 7.1.11, as there were apparent violations of DC 2.1 and DC 10.2.

2.5 On 19th July 2010, the chairman of the FINA Doping Panel informed Mr. Zammit and his federation that the Doping Panel would deal with his case in accordance with FINA Rule C 21.5 and DC 8.1.

2.6 Mr. Zammit's legal counsel informed FINA by email that the athlete would not appear for the FINA Doping Panel hearing, but would submit his arguments in writing.

2.7 On 20th August 2010, the FINA Doping Panel received the written defence submitted by Mr. Zammit's lawyer.

III JURISDICTION AND APPLICABLE RULES

3.1 The jurisdiction of the FINA Doping Panel arises out of the provisions of the FINA Rules C 21.5., C 21.6 and DC 8.1.

3.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since January 1, 2009 (amended on the occasion of the FINA General Congress on 24 July 2009).

IV LEGAL DISCUSSION

THE FACTS

4.1 Mr. Zammit was tested positive on 1st May 2010 on the occasion of the Men's Qualification Tournament for the 2010 European Water Polo Championships in Istanbul, Turkey.

4.2 On 17th May 2010, the Turkish Doping Control Center, WADA-accredited laboratory of Ankara, reported the presence of a metabolite of Stanozolol (Class S.1.a Anabolic Agents Steroids) in Mr. Zammit's sample.

4.3 Mr. Zammit did not have a TUE covering Stanozolol. Accordingly, the FINA Doping Control Review Board (DCRB) recommended that the positive drug test be considered an adverse analytical finding.

MOTIONS AND CONTENTIONS

4.4 In his letter to the FINA Doping Panel, Mr. Zammit admitted that he committed a rule violation, contended that his positive test came from the ingestion of pills obtained from his trainer which Mr. Zammit did not realize contained Stanozolol and expressed regrets for this negligence.

4.5 Mr. Zammitt has requested an application of DC 10.5.2, contending that he did not bear significant fault for his rule violation.

THE LAW

4.6 FINA DC 2.1.1 reads

"It is each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body. Competitors 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 Competitor's part be demonstrated in order to establish an anti-doping violation under DC 2.1."

DC 2.1.2

"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Competitor's A Sample where the Competitor waives analysis of the B Sample and the B Sample is not analyzed; or, where the Competitor's B Sample is analyzed and the analysis of the Competitor's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Competitor's A Sample."

DC 10.2

"The period of Ineligibility imposed for a violation of DC 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), DC 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or DC 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in DC 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in DC 10.6, are met: First violation: Two (2) years' Ineligibility."

DC 10.5

"If a Competitor or other Person establishes in an individual Case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Sample in violation of DC 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the Competitor must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced."

THE DOPING RULE VIOLATION

4.7 The substance Stanozolol is referenced in the WADA Prohibited List 2010, and is not a "Specified Substance" per DC 4.2.1.

4.8 The responsibility of the athlete is established pursuant to DC 2.1.1 as he accepted the results of the A-sample analysis.

4.9 He has not presented a TUE for the use of Stanozolol.

4.10 The excuse of the athlete that he took pills from his trainer at the gym, just thinking they were dietary pills, does not satisfy the standard that he bore no significant fault or negligence as mentioned in DC 10.5.2. On the contrary, the athlete's actions demonstrated a regrettable lack of responsibility and care. The fact that Mr. Zammit is not a full-time professional athlete, is not relevant; all athletes subject to FINA rules are required to take responsibility for any substance which they ingest and must do more than take a substance from the athlete's trainer and ingest it without undertaking any inquiry into the ingredients contained in the product.

V THE SANCTION

5.1 The presumptive sanction is two (2) years ineligibility as set forth in FINA DC 10.2 for a violation of DC 2.1 (Presence of Prohibited Substance or its Metabolites or Markers).

5.2 The FINA Doping Panel is of the opinion that a sanction of two years ineligibility is fully justified.

VI. CONCLUSION

6.1 Mr. Matthew Zammit receives a two-year period of ineligibility commencing on 22 June 2010, and ending at the conclusion of 21 June 2012, for his first anti-doping rule violation.

6.2 All costs of this case shall be borne by the Aquatic Sports Association of Malta (ASAM) in accordance with FINA DC 12.2.

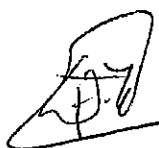
6.3 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3 and DC 13.6).

F.D. van Heijningen
Chairman

William Bock III
Member

Farid Ben Belkacem
Member

Signed on behalf of all three Panel Members



F.D. van Heijningen