

**At the Headquarters of the Malta Sports Council, Cospicua**

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

**Ref: 03/2013/NADDP**

**Anti-Doping Commission (Malta)**

**vs**

**Simon Aquilina (Futsal Malta Association and Malta Football Association – Holder of Identity Card No. 412275M)**

This is the decision of the National Anti-Doping Disciplinary Panel (hereinafter referred to as the "Panel"), in the case brought against Mr Simon Aquilina.

The Panel, is composed of Dr. Joseph Mifsud as Chairman, and Dr. Sue Mercieca and Dr. Aaron Formosa as members.

Dr. Sue Mercieca and Dr. Aaron Formosa declared, before the Chairman, that they were not subject to any circumstance or conflict that can have a negative impact on their impartiality in this case. The Chairman of the Panel made the same declaration.

Having seen the request of the National Anti-Doping Commission (Ref. No. 1TSTSIMAQU-13/13), made on the 18<sup>th</sup> December 2013 (Dok LA 2), to the Chairman of the Panel for appointing a sitting for hearing of a case of alleged breaching of Anti-Doping Regulations in accordance with Legal Notice 281/2011 (Cap. 455 of the Laws of Malta) by Mr Simon Aquilina.

Took note and reviewed all the documents that were forwarded to the Panel by the Chairperson, Anti-Doping Commission, including principally the following:

- Action by the National Association / Federation following an Adverse Analytical Finding – (Dok LA 1)
- Request to the National Anti-Doping Disciplinary Panel to Schedule a Hearing – (DoK LA 2)
- Notifika ta' Seduta – Kaz Numru NADDP 003/13 – (DoK LA 3)
- B-Sample Analysis – (DoK LA 4)
- Initial Review by the NADO regarding adverse analytical finding – (DoK LA 5)
- Initial Review by the NADO regarding adverse analytical finding – (DoK LA 6)
- Scheduling of 'B' Sample Analysis – (DoK LA 7)
- B-Sample Analysis – (DoK LA 8)
- Request to the National Anti-Doping Disciplinary Panel to Schedule a Hearing – (DoK LA 9)
- Notification of Adverse Analytical Finding – (DoK LA 10)
- Action by the National Association / Federation following an Adverse Analytical Finding – (DoK LA 11)
- Letter sent by Mr. Joseph Gauci – Secretary General Malta Football Association to Mr. Simon Aquilina on the 12<sup>th</sup> December 2013 – (DoK LA 12)

- Futsal Malta Association – Referee’s Match Report – List of Players (DoK CT 1)
- Doping Control Form (Urine) – (DoK RP 1)
- Chain of Custody Form – (DoK RP 2)
- Control Officer Report Form – (DoK RP 3)
- Futsal Malta Association – Registration of an Amateur / Professional Player with the Futsal Malta Association – Form ‘R’ – (DoK EF 1)
- Email sent by Mr. Emanuel Fenech – General Secretary, Futsal Malta Association to Mr. Ignatius Zammit and Mr. Musu on 10<sup>th</sup> December 2013 – (DoK EF 2)
- Email sent by Mr. Emanuel Fenech – General Secretary, Futsal Malta Association to Mr. Joseph Gauci MFA on 12<sup>th</sup> December 2013 – (DoK EF 3)
- Fax Message sent by Mr. Manolis Lyris – Laboratory Director to Mr. Ignatius Zammit on 7<sup>th</sup> December 2013 – (DoK IZ 1)
- Initial Review by the NADO Regarding Adverse Analytical Finding – (DoK IZ 2)
- Notification of Adverse Analytical Finding – (DoK IZ 3)
- Request for the ‘B’ Sample Analysis – (DoK IZ 4)
- Fax Message sent by Mr. Manolis Lyris – Laboratory Director to Mr. Ignatius Zammit on 16<sup>th</sup> December 2013 – (DoK IZ 5)
- ‘B’ Sample Analysis – (DoK IZ 6)

Took note of the notice issued to Simon Aquilina, issued in order of the National Anti-Doping Disciplinary Panel on the 16<sup>th</sup> January 2014 – Ref. No. NADDP 003/13, through which the athlete was summoned to appear before the said panel on the 29<sup>th</sup> January 2014 at 1900 hours at the ASA Offices, National Swimming Pool Complex, Tal-Qroqq in relation to the accusation brought against him by the Anti-Doping Commission regarding the illicit use of a prohibited substance following the analysis of a urine sample taken from Simon Aquilina on the 5<sup>th</sup> November 2013. The notification also served to inform the athlete of his rights, as stipulated by Article 9 of the Anti-Doping Regulations of 2011 (Legal Notice no. 281/2011), and more specifically: -

- His right to assistance or legal representation by a lawyer;
- His right to answer regarding the alleged breaching of Anti-Doping Regulations;
- His right to present evidence, including the right to summon witnesses and examine said witnesses;

A copy of this notification was also sent to the following entities:

- The Anti-Doping Commission, Malta
- The Malta Football Association
- The Futsal Malta Association
- The Kunsill Malti għall-iSport (Malta Sports Council)

Heard and took note of the evidence given under oath during the hearing of the 29<sup>th</sup> January 2014 held at the ASA Office at tal-Qroqq by the following:

- Mr Simon Aquilina (the athlete charged with the anti-doping breach);
- Mr. Rodney Pisani (ID Card No. 560784M) – Doping Control Officer;
- Mr. Emanuel Fenech (ID Card No. 500361M) – Secretary General, Futsal Malta Association;
- Mr Jason Farrugia (ID 639782M) Assistant Coach of the San Gwann Club;
- Mr. Ignatius Zammit (ID Card No. 561990M) – National Co-ordinator of NADO;

- Dr. Lucienne Attard (ID Card No. 585262M) – Chairperson NADO;

Heard and took note of the submissions by Dr. Clint Tabone on behalf of the Anti-Doping Commission and Dr. Noel Camilleri on behalf of the athlete.

Noted:

- The written submission by Dr. Noel Camilleri dated 11<sup>th</sup> February 2014 – (DoK NC 1)
- The counter submission by Dr. Clint Tabone dated 14<sup>th</sup> February 2014 – (DoK CT 2)

## 1. Preliminaries

1.1 In the case under review Simon Aquilina who is registered as a player with San Gwann Futsal Club, at about 21.14 hrs on the 5<sup>th</sup> November 2013 was asked to provide a urine sample 'in-competition' immediately after the futsal match between Mosta and San Gwann which was then played at the Corradino Sports Complex.

1.2 According to the procedures the 'Doping Control Form' and the 'Chain of Custody Form' were completed. On the 5<sup>th</sup> November 2013 at about 21.14 a urine sample of 125 ml quantity was collected from Simon Aquilina, and then requested to list "any prescription/non-prescription medications or supplements taken over the past 7 days and any transfusions received over the last 6 months" Aquilinas answer was that he had taken Panadols and Catafast. Simon Aquilina's urine sample was sealed in two containers marke 'A' and 'B'.

1.3 The urine samples were sent to a WADA<sup>1</sup> accredited laboratory at the Olympic Athletic Center of Athens 'Spyros Louis'. On the 7<sup>th</sup> December 2013 this laboratory issued its analysis report number 11630\_2 under the signature of Laboratory Director Dr Manolis Lyris PhD. In this report, *inter alia*, it was declared that:

- Event/status of Control: In Competition Testing
- Sport: Futsal
- Type of Sample: Urine
- Chain of Custody Status: According to WADA specifications
- Sample Code: A469925
- Sex: Male
- Substance Identified: Cocaine
- Result: Adverse Analytical Finding

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<sup>1</sup> World Anti-Doping Agency

1.4 According to the 2013 Prohibited List <sup>2</sup> as published by WADA “All stimulants (including both optical isomers where relevant) are prohibited, except imidazole derivatives use and those stimulants included in the 2013 Monitoring program. Cocaine is considered as one of the ‘in-competition’ prohibited substances, and in fact cocaine specifically mentioned under the paragraph containing the list of the (prohibited) Non-Specified Stimulants.

1.5 On the 8<sup>th</sup> December 2013 Simon Aquilina was informed that a prohibited substance was detected in the urine sample that was collected from him on the 5<sup>th</sup> November 2013, Mr Aquilina was also given a Report of Adverse Analytical Finding in which it was stated that benzoylecgonine and ecgoninemethylester (cocaine metabolites) was identified in his urine sample. It was added that cocaine metabolites were confirmed in the sample as also mentioned in the laboratory analysis report issued by Dr Manolis Lyris. Then Mr Aquilina was told that the presence of such substance was in violation of the WADA Code (Article 2.1) and LN 281/2011 (Art 3.3) of the Laws of Malta. Furthermore Simon Aquilina was informed of the possible consequences which such a breach may attract in terms of the WADA Code (Art 10.1 and Art 10.2) and LN 281/2011 (Art 11.1 and Art 11.2).

1.6 Also on the 8<sup>th</sup> December 2013 the Chairperson of the Anti-Doping Commission informed the President of Futsal Malta Association and the Secretary General of the Malta Football Association of the Adverse Analytical Finding concerning Simon Aquilina. In turn the General Secretary of the Futsal Malta Association on the 10<sup>th</sup> December 2013 notified Mr Aquilina that “the Futsal Malta Association is provisionally suspending you with immediate effect”.

1.7 Simon Aquilina was given the opportunity to request the analysis of Sample ‘B’ by the 12<sup>th</sup> December 2013, Mr Aquilina did exercise such a right. On the 12<sup>th</sup> December 2013 the Director of the laboratory in Athens was advised by the National Anti-Doping Program Coordinator that “the athlete did request the analysis of the B-Sample.” The athlete informed the Anti Doping Commission that he was neither attending the opening and analysis of B Sample. The Anti Doping Commission informed the laboratory about this and asked the laboratory for the appointment of an independent person as provided by the International Standards of Laboratories.

1.8 On the 13<sup>th</sup> December 2013 the laboratory conducted the analysis of the B Sample. The presence of benzoylecgonine and ecgoninemethylester (cocaine metabolites) was again identified in B Sample – Sample Code: B416630.

## 2. Merits

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<sup>2</sup> The World Anti-Doping Code, The 2013 Prohibited List (published in October 2012 effective as from 1<sup>st</sup> January 2013

An oral hearing in respect of the charge took place in Tal-Qroqq on 29<sup>th</sup> January 2014. The player was represented by Dr Noel Camilleri. The Anti Doping Commission was represented by Dr Clint Tabone.

During his evidence under oath, Rodney Pisani – ID Card No. 560784M declared that he has been performing doping tests for seven years with the Malta Football Association and for another 18 months with NADO. He is a certified Doping Control Officer with NADO. He explained in detail the procedure that has been adapted to perform a doping control test on Simon Aquilina. This was done in one of the boardrooms of the Corradino Sports Pavilion, with a toilet adjacent to it. Asked whether there was any liquid on the floor, Rodney Pisani replied in the negative. He also explained the procedure of the sealing of the samples, explaining that he had to put pressure with his foot on the outer plastic cover to seal the container; as per normal procedures with the VERSAPAK containers. No protective clothing was used. Asked whether he had any contact with, or used cocaine before, he replied in the negative. Rodney Pisani identified the player from whom the samples were taken as Simon Aquilina.

During his evidence, Emanuel Fenech – ID Card No. 500361M, Secretary General of the Futsal Malta Association confirmed that Simon Aquilina is a player registered with the Futsal Team of San Gwann FC and tabled the Registration Form, duly signed by the same Simon Aquilina. He is registered as an amateur player with this club. Mr. Fenech explained that, after receiving the notification from Kunsill Malti għall-iSport that the player had resulted positive to doping, he had informed the club that the player was being temporarily suspended. Emanuel Fenech identified the player as Simon Aquilina.

During his evidence, Ignatius Zammit – ID Card No. 561990M, National Anti-Doping Programme Coordinator of NADO explained the procedure of retrieving the samples from the Doping Control Officer who had carried out the tests, submitting the samples to the laboratory and all the documentation related to each case. Following the communication of the result of the first sample, Simon Aquilina had requested to carry out the analysis on Sample B, at his own expense. Ignatius Zammit confirmed that he was present on the day when the samples were taken, and that these samples had been passed on to him immediately after the test by the DCO. He also confirmed that the player, whom he identified as Simon Aquilina, had duly signed all documents. Asked whether he had any contact with, or used cocaine before he replied in the negative.

During her evidence, Dr. Lucienne Attard – ID Card No. 585262M, Chairperson of NADO explained her involvement in each case, stating that she is aware of all the procedures going on. Asked whether the DCO were to stop the procedure, in case the toilet was contaminated, Dr. Attard explained that the DCO was responsible for overseeing the whole procedure, and that the athlete was passing the urine directly into the containers.

At this stage, the prosecution closed the procedure on behalf of the NADO.

During evidence under oath, the player Simon Aquilina – ID Card No. 412275M explained what happened on the day of the test. He reported that after the match he had removed his football boots and proceeded to the Doping Room. Since he was only wearing socks, he realized that there was urine on the ground. He confirmed that himself, after which the DCO had proceeded to seal the large container containing the two samples, had sealed the first two containers. The player explained that the DCO was not wearing any sterile

gloves or overshoes. Asked whether he had attended any seminars or educational programmes on anti-doping, organized by his association, he replied in the negative. However he confirmed that he was fully aware of the procedure, as he had done several previous tests before. He also confirmed that he had resulted positive in one previous test. The board asked Mr Aquilina whether the previous tests he was subjected to were different from this one; to which question he replied in the positive. Mr Aquilina was asked how come he did not draw the attention of the Doping Control Officer of these alleged 'irregularities', the presence of urine and differences from the previous tests.

During his evidence, Jason Farrugia – ID Card No. 639782M, Assistant Coach of the Club explained that on the day after the match he was in the bar area at the Corradino Sports Pavilion and he went to inform player Simon Aquilina that there was his wife. Jason Farrugia said that he had seen the DCO pressing on the container on the ground with his foot. He had no idea whether the container had anything inside, nor of the colour, size or its contents.

Evidence of both parties was closed at this stage.

At this point the defendant's advocate submitted that the procedure was not a correct one. The Doping Control Officer had worn no protective gloves or sterile overshoes. Furthermore, the DCO had not confirmed that the signatures on the documentation had been the same of the player – Simon Aquilina. Dr. Camilleri reiterated that in the presence of a default, no matter how negligible such default is in the procedure, this should always merit in favour of the defense.

The Chairman asked the defense counsel whether he wanted to make any medical counter submissions.

Defense counsel was granted one week to submit the medical counter submission, and the NADO a further one-week period to submit its counter submission.

### 3. Considerations

The Panel is grateful to the representatives of both parties for their oral and written presentations.

Under the Program, cocaine is a prohibited substance in competition. This includes any metabolite of cocaine. The presence of a cocaine metabolite in a player's body in competition is a doping offence. The Anti Doping Organisation (NADO) bears the burden of proving that a doping offence has been committed. It must prove the offence to the comfortable satisfaction of the Panel, bearing in mind the seriousness of the allegation that is made.

The Anti Doping Commission relies on the laboratory's finding that a cocaine metabolite, was present in the sample numbered A469925. The NADO submits that the sample bearing that number is that of the athlete Simon Aquilina. The athlete has not contested that the sample is his but submits that there were departures from the International Standard for Testing (IST) and from best practice in the collection and storage of the sample.

It is for the athlete to prove that departures from the IST occurred during testing and he must prove this on the balance of probability. If he does so, the NADO has the burden to establish that such departures did not cause the adverse analytical finding made by the laboratory. When NADO bears that burden it must prove this negative i.e. lack of causation of the adverse analytical finding, to the comfortable satisfaction of the Panel.

Accordingly, the Panel's first task is to evaluate the criticism made by the Athlete if the sample collection process and handling of the sample.

Mr Aquilina's criticism of the procedure can be summarized as the athlete's sample was not handled in a manner that protected its integrity, identity and security prior to transport from the doping control station.

The Panel does not accept the argument for the following reasons. First, it was accepted that Rodney Pisani performed his functions competently and professionally. Secondly, on the evidence presented, the Panel does not have any reason to find that Pisani's standard practice was departed from. Thirdly, the following of standard practice is in no way contradicted by, and indeed is corroborated by the doping control form which is intended to provide a contemporaneous record of the process precisely because accurate and detailed recollection is unlikely. Fourthly, the record of what happened to the sample after it left the doping control station is in no way inconsistent with the Rodney Pisani and Ignatius Zammit accounts.

Mr Simon Aquilina presented a statement through his lawyer whereby he stated a number of issues. It should be held that such statement is not being considered by the Panel and this for two reasons that is;

a) The Panel ordered that any written submissions made should only consider the process adopted in taking urine samples from a medical point of view. The Panel never demanded that submissions are made by the athlete concerned as regards to his innocence.

b) If Mr Simon Aquilina wanted to express his views he could have done so when he took the witness stand, a thing which he opted to do but then failed to mention what he states in his submissions.

The athlete does not possess a therapeutic use exemption (TUE) in respect of cocaine.

The Panel noted the declaration of Mr Simon Aquilina that he has never attended any information session on the anti-doping legislation. As this Panel had said on other occasions that Sports Organisations have a duty to educate their athletes about anti-doping regulations for them to avoid anti-doping breaches.

The Panel concludes that NADO has succeeded in proving to the comfortable satisfaction of the Panel that a doping offence has been committed by the Athlete.

#### 4. The Decision

On the basis of the foregoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Mr Simon Aquilina by finding:

- That Mr Simon Aquilina has breached the Anti-Doping Regulations, 2011 Art 3(3) and the WADA Code Art 2.1 as the prohibited substance 'cocaine' or its metabolites has been found in Simon Aquilina's urine samples A and B that had been collected from him 'in-competition' on the 5<sup>th</sup> November 2013 immediately after the Futsal match between Mosta and San Gwann.
- And therefore the National Anti-Doping Disciplinary Panel as provided by the Anti-Doping Regulations, 2011 Art 11(2) and the WADA Code Art 10.2 is imposing on the athlete Simon Aquilina a suspension of ineligibility from any sports activities for a period of two (2) years commencing from the date of his provisional suspension on the 10<sup>th</sup> December 2013.

Dr Joseph Mifsud  
Chairman

Dr Sue Mercieca  
Member

Dr Aaron Formosa  
Member

This 13th day of March 2013

At Cospicua, Malta