

INTERNATIONAL SKATING UNION

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Case no. 01/07

DECISION

of

The ISU Disciplinary Commission

Panel: - Dr. Béatrice Pfister (Chair)
- Dr. Allan Böhm
- Volker Waldeck

In the matter of

International Skating Union, Chemin de Primerose 2, 1007 Lausanne, Switzerland

- Complainant -

against

Anthony Lobello,

-Alleged Offender -

and

U.S. Speedskating, Utah Olympic Oval, P.O. Box 18370, South Cougar Lane (4800 West), Kearns, UT 84118, USA

- Interested ISU Member -

Concerning alleged violation of the ISU Anti-Doping Rules

I. History of the Procedure

1. On April 24, 2007, the ISU filed a complaint with the ISU Disciplinary Commission (DC) against the Alleged Offender, together with exhibits.
2. By order of April 25, 2007, the DC invited the Alleged Offender to file his statement of reply within 21 days upon receipt of said order, to inform the DC, within the same time period, whether he requests an oral hearing in accordance with Article 8 of the ISU Anti-Doping Rules and letters E.3 and E.4 of the ISU Anti-Doping-Procedures. At the same time the Interested ISU Member was given the opportunity to file its own statement within the same 21 day time limit and the ISU was invited to furnish certain additional documents and information, also within 21 days.

The ISU submitted the requested additional information on April 27, 2007. The statement of reply of the Alleged Offender and the statement of the Interested ISU Member were both filed on May 14, 2007, all within due time. The Alleged Offender waived his right for an oral hearing.

3. On May 29, 2007, the ISU filed another brief, commenting on the statement of reply of the Alleged Offender.

II. Procedural Matters

1. According to Article 23.10 of the ISU Constitution and Article 8.1.1 of the ISU Anti-Doping Rules, the DC has jurisdiction in doping cases arising out of ISU Testing or Testing at International Events. The present case is about failure to provide whereabouts information of a skater subject to ISU Testing and thus arises out of ISU Testing in the sense of Article 8.1.1 of the ISU Anti-Doping Rules; therefore the DC has jurisdiction to hear and decide this case.
2. The present case is governed by the ISU Anti-Doping Rules, the ISU Anti-Doping Procedures, both in their versions of January 24, 2006, and the DC Rules of Procedure.
3. According to Article 11 of the DC Rules of Procedure, the exchange of writs shall generally consist of a statement of complaint and one statement of reply. In case of exceptional circumstances the Chair of the Panel may order a second exchange of writs. In the present case the Chair of the Panel has not ordered a second exchange of writs. Therefore the brief of the ISU filed on May 29, 2007, cannot be considered and is not included in the record.

III. Facts

1. The Alleged Offender is a 22 year old world class short track speed skater and member of U.S. Speedskating. By fax of May 30, 2006, the ISU informed U.S. Speedskating about the inclusion of the Alleged Offender in the ISU Registered Testing Pool 2006-07, based on Article 5 of the ISU Anti-Doping Rules and Section C of the ISU Anti-Doping Procedures and reminded of the duties related thereto regarding whereabouts, i.e. permanent location and monthly schedule information.

2. By fax of September 15, 2006, the ISU reminded its members, including U.S. Speedskating, of the September 22, 2006, deadline for the submission of skater whereabouts information for October, November and December 2006.

On October 13, 2006, the ISU informed U.S. Speedskating that it had not received whereabouts information for several skaters, including the Alleged Offender, and reminded of the consequences of non-submission of whereabouts information. A first formal warning was issued by telefax dated October 27, 2006. The ISU asked U.S. Speedskating to inform the Alleged Offender about this warning and to draw his attention to the provisions regarding whereabouts violations as stated in Article 10.4.3 of the ISU Anti-Doping Rules.

On December 15, 2006, the ISU reminded its concerned members that the deadline for providing whereabouts information for the first quarter of 2007 was December 22, 2006. On December 29, 2006, the ISU informed U.S. Speedskating about the missing whereabouts information of, among others, the Alleged Offender and a second reminder followed on January 9, 2007. A second formal warning against the Alleged Offender was issued on January 19, 2007.

On March 9, 2007, the ISU reminded its members of the March 23, 2007, deadline for the submission of whereabouts information for April, May and June 2007. On April 10, 2007, the ISU informed U.S. Speedskating about the lack of whereabouts information from, among others, the Alleged Offender and sent out a second reminder on April 13, 2007, fixing a last date for the submission of whereabouts information on April 20, 2007. Finally, on April 24, 2007, the ISU issued a third formal warning against the Alleged Offender for failure to provide required whereabouts information.

3. In his Statement of Reply of May 14, 2007, the Alleged Offender did not contest his failure to file necessary whereabouts information, expressed his understanding of the importance of submitting permanent location and monthly whereabouts forms and claimed very unusual circumstances to be responsible for his failure. The Alleged Offender explained that his schedule had been out of his control during the past months. After the world short track and world short track team championships he had not been sent home to Michigan but rather to Colorado Springs for one day and then to Salt Lake City. U.S. Speedskating had just told him that the National Team Short Track Program would be moved to Salt Lake City and he had to find housing etc. He had just three or four days to begin with his moving out of Michigan, then had to drive to his family home in Florida and further on to Utah which had put him under stress. Once settled into Salt Lake City he had immediately sent his new permanent address to the ISU, on the same day on which he received the third formal warning.

In its own statement U.S. Speedskating in the essence confirmed the facts as put forward by the Alleged Offender and added that U.S. Speedskating had had a very difficult year internally with the relocation of its headquarters to Salt Lake City and a complete overhaul of staff. When the final notice of non-compliance was faxed to its headquarters by the ISU the entire staff had been in Milwaukee for Board meetings which resulted in missing the final April 24, 2007, deadline. Further, U.S. Speedskating explained that it had made a number of attempts to encourage the skaters to complete the necessary ISU forms in a timely manner but admitted not to have tracked closely the compliance in the belief that the skaters must bear the responsibility for their careers.

Both, the Alleged Offender and U.S. Speedskating ask the DC for consideration and leniency.

IV. Law

1. According to Article 5.5.2 of the ISU Anti-Doping Rules all members/skaters must ensure that all whereabouts forms are adequately and accurately completed and submitted by the due date and failure to do so will result in disciplinary action against the members as per Article 12.1 and 12.3 and/or skaters in accordance with Articles 5.5.4 and 10.4.3.

Article 5.5.4 says that any skater in the ISU Registered Testing Pool who fails to submit a required quarterly whereabouts report after receipt of two formal written warnings from the ISU in the preceding 12 months shall be considered to have committed an ISU Anti-Doping Rule violation pursuant to Article 2.4.

The Alleged Offender has uncontestedly failed to submit the required whereabouts reports for April, May and June 2007 by the due date after having received two formal written warnings in the preceding 12 months. Consequently an ISU Anti-Doping Rule violation under Article 2.4 of the ISU Anti-Doping Rule has been established.

2. According to Article 10.4.3 of the ISU Anti-Doping Rules an ineligibility period of three months up to one year has to be imposed for a first violation of Article 2.4 (whereabouts violations or missed tests). Within this frame, the duration of ineligibility - in the absence of specific guidelines in the ISU Anti-Doping Rules - according to general principles of law has to be determined based on an assessment of the seriousness of the offence in light of all relevant circumstances, especially the degree of the Alleged Offender's fault.
3. The requirement of furnishing quarterly whereabouts information with indication of permanent location and monthly schedules unquestionably puts a significant burden on the athletes belonging to the ISU Registered Testing Pool. It is easily feasible that a skater for whatever reason may on one occasion or the other simply and inadvertently forget to forward the requested information to the ISU. Yet, this is taken into account by the fact that a one-time failure does not bare any adverse consequences. Rather, three failures and two formal written warnings within any 12 months period are needed before an ISU Anti-Doping Rule violation has been committed.

Furthermore, as it is evidenced by the exhibits to the statement of complaint, the ISU undertakes big efforts to facilitate the skaters' fulfilment of the whereabouts requirements in that its members are reminded of each and every deadline about one week before their expiry and in case of non-observation allows the skaters to avoid a warning by immediately furnishing the missing information.

4. There is no indication in the file of the present case that would suggest any intent of the Alleged Offender to avoid out of competition testing. From his and his federation's explanations it seems plausible that his non-observation of the March 23, 2007, deadline for filing the whereabouts information concerning April, May and June 2007 was a result of the sudden necessity to move to Salt Lake City and all the inconveniences re-

lated thereto. However, this fact is no valid excuse for his Anti-Doping Rule violation. First of all it has to be kept in mind that the ISU reminded its Members already on March 9, 2007, of the March 23 deadline and it is hard to see what would have prevented the Alleged Offender from filing the requested whereabouts information between March 9 and that due date. Further, the Alleged Offender has not given any explanations whatsoever for his failure to observe the due dates for the last quarter of the calendar year 2006 and the first quarter of the calendar year 2007. It seems apparent that he had not been at all impressed by the first and the second formal written warnings which should, if he had taken the whereabouts requirement seriously at all, have put him on alert and should have caused him to avoid a third failure despite the distressful circumstances he lived in upon his return from the World Short Track and World Short Track Team Championships in Europe.

The Alleged Offender's lack of appreciation of the importance of the whereabouts information is further evidenced by his statement according to which he immediately sent his new change of permanent address form to the ISU after he had settled into Salt Lake City. Apart from the fact that he sent his permanent location after the expiry of the last deadline, he apparently still ignored that not only permanent location but monthly whereabouts information is requested.

All in all, the fact that the Alleged Offender failed to submit required quarterly whereabouts reports three times within six months, despite several reminders and two formal warnings reveals an inexcusable degree of negligence, a severe lack of responsibility to comply with the duties imposed by the ISU Anti-Doping Rules and missing sensitivity to the importance of whereabouts information and the availability for out of competition testing within the ISU's aim to vigorously fight Doping.

5. Taking in to account the above relevant circumstances the DC deems it adequate to impose half of the maximum sanction, i.e. an ineligibility period of six months.

According to Article 10.8 of the ISU Anti-Doping Rules the period of ineligibility shall start on the date on which it is imposed, i.e. on the date of the present decision.

6. Article 12.3.3 of the ISU Anti-Doping Rules, in the version valid at the time the present ISU Anti-Doping violation was committed, authorizes the DC to impose a fine in the amount of CHF 1'000.-- per skater if a Member has failed to make diligent efforts to keep the ISU informed about a skater's whereabouts after receiving a request for that information from the ISU.

The DC considers this rule to be applicable only if a Member itself has explicitly been requested to furnish whereabouts information regarding its skaters. This has not been the case here. While the ISU has repeatedly requested U.S. Speedskating to inform the Alleged Offender of his non-submission of whereabouts information and to draw his attention to the consequences thereof, it has not asked U.S. Speedskating itself to furnish this information. Therefore the DC decides not to impose any fine on U.S. Speedskating. However, the DC wishes to remind U.S. Speedskating of its responsibility to assure that its skaters comply with the whereabouts requirements.

V. Costs

According to Article 12.2. of the ISU Anti-Doping Rules ISU Members shall be obliged to reimburse the ISU all costs related to a violation of the ISU Anti-Doping Rules, committed by a skater affiliated with that Member. Therefore the costs of these proceedings, amounting to CHF 650.-- have to be borne by U.S. Speedskating.

Based on the above considerations the DC issue the following

DECISION

1. Anthony Lobello is declared responsible for an Anti-Doping violation under Articles 5.5.2, 5.5.4 and 2.4 of the ISU Anti-Doping Rules.
2. A six months ineligibility period, beginning on June 8, 2007, is imposed on Anthony Lobello.
3. U.S. Speedskating has to pay to the ISU the amount of CHF 650.--.
4. Each party bears its own costs for the procedures before the DC.

This decision is sent to Antony Lobello and U.S. Speedskating by e-mail and registered mail against return receipt and by e-mail and ordinary mail to the ISU.

June 8, 2007

Dr. Béatrice Pfister (Chair)



Dr. Allan Böhm



Volker Waldeck



The present decision is subject to appeal to the Court of Arbitration for Sport, Château de Bèthusy, Av. de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 23.12 and Article 24 of the ISU Constitution.