

At the Headquarters of the Malta Sports Council,
Cottonera Sports Complex, Cospicua.

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: 05/2015

Anti-Doping Commission (Malta)

-vs-

**ALESSIO RESTUCCIA (Athlete member
of the Futsal Malta Association)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi as Chairperson, and Dr. Aaron Formosa and Dr. Abigail Sciberras as members.

Before the commencement of this proceeding, Dr. Aaron Formosa M.D. and Dr. Abigail Sciberras declared to the Chairperson that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration was made by the Chairperson to the 'Panel'.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission (Ref. No. ITSTALERES -15/3 dated the 4th of July, 2015 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Alessio Restuccia of the Anti-doping Regulations (Legal Notice 17 of of 2015, Sports Act, Chapter 455, 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 4th July, 2015 (Doc 19b);
- (ii) The request by NADO to the National Association/Federation of the alleged breach by Alessio Restuccia dated 19th June, 2015 (Doc 15b);
- (iii) Letter of Notification by NADO to Alessio Restuccia of a possible violation of the Anti-Doping Rules (Doc 14b);
- (iv) A copy of the Doping Control Officer Report Form filed by NADO doping officer Johann Pace following the attempted doping test on the 12th March, 2015 (Doc 6);
- (v) A copy of the Analysis Report (Doc 13);

Took note of the Notice issued by the Panel to Alessio Restuccia to appear before the Panel on the 6th of August, 2015 at 11am and answer to the accusation based on Article 3(2)(c) of L.N 17 of 2015 of the Laws of Malta: "*Evading sample collection, or without compelling justification, refusing or failing to submit to sample collection after notification as authorised in these regulations: Provided that, 'evading sample collection' shall also be achieved if it is established that an athlete was deliberately avoiding a doping control official to evade notification or testing.*"

Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the Malta Amateur Athletic Association and Malta Sports Council.

Present at the sitting of the 6th of August, 2015 Alessio Restuccia accompanied by his lawyer Dr. Jacques Farrugia and Dr. Lucienne Attard, Chairperson of the National Anti-Doping Commission.



2. Merits:

2.1 Heard and took note of the evidence given under oath during the sitting held on the 6th of August, 2015 by Alessio Restuccia during which he explained that two persons went up to him after the game and asked him to sit for the doping test. The two persons identified themselves and explained the procedure for testing. He did not refuse to do the test and had no problem to do the test. He could not complete the test because could not fill the container at the requested amount. He explained that he tried to cooperate but could not complete the test. He explained that he plays Futsal as a hobby and has no income. Restuccia apologizes for not completing the test but he declares that his personal satisfaction is that the result of the test confirms that he does not make use of any prohibited substances because the final result is negative. He claims that he did not complete the test because his employer told him that if he was late at work he was fired from work. The persons assisting him during the test did nothing wrong but he could not stay any longer there. Restuccia confirms that the declaration on the Doping Control Form saying "Durante questo periodo ho provato piu' volte a completare il test, ma per motivi di lavoro sono dovuta andare via. Spero venga rispettato il mio sforzo e il mio lavoro che mi permettono di vivere!" was written by him. (The declaration written in Italian states that "During the test I have tried various times to complete the test but due to work commitments I had to leave. I hope that my dedication and work which is my source of living is respected.")

2.2 Dr. Farrugia during his oral submissions argued that his client wanted to cooperate and did cooperate as much as it was possible to him. Moreover, the test was conducted and the testing resulted in a negative outcome. Restuccia's action cannot amount to evasion because there was no intention to avoid giving the required sample but it was a situation in which he could not do otherwise.

2.3 Dr. Attard verbally submitted that Restuccia's decision to leave before the test was completed was tantamount to evasion and this is so because in the case the testing could not reach an outcome, the test would be null. The regulations are clear as to what constitutes a completed test and this was not the case. Deviation from these rules can cause problems in arriving at a result.

3. Considerations:

3.1. The regulations specify the correct manner to conduct a doping test. In this case the athlete did cooperate with the officers and the Panel believes that there was no intention on part of the athlete to evade the test but rather there was negligence on his part in completing the test. The accusation brought before the Panel is not that there is a positive result from the doping test and therefore one cannot argue that the fact that the result is negative, then the athlete should be acquitted. The accusation here is that the athlete did not follow the procedures and regulations to complete the test and this was proved so much so that the athlete himself admitted to such behavior and apologized to his behavior. However, the Panel after taking the circumstances of the case believes that the athlete did not intend to evade sample collection nor did he act maliciously to avoid the test but rather acted recklessly and negligently.

4. Decision

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

4.1 Alessio Restuccia has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(c)] and WADA Code (Art. 2.3) by evading sample collection "in-competition" on the 12th March, 2015.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (3) (a) of the Anti Doping Regulations, 2015 and Art. 10.3.1 of the WADA Code is imposing on the athlete Alessio Restuccia a suspension of ineligibility from any sports activities for a period of two (2) year



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.

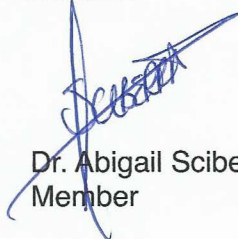
4.3 A copy of this decision is to be forwarded to the Malta Futsal Association.



Dr. Maria Azzopardi
Chairperson



Dr. Aaron Formosa
Member



Dr. Abigail Sciberras
Member

This 26 day of August 2015

At Cospicua, Malta