
Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: 2/2018

Anti-Doping Commission (Malta)

-vs-

Dylon Mula (ID No. 325119M) - member
of the Malta Boxing Association

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi LL.D. as Chairperson, and Dr. Frank Testa LL.D., Prof Janet Mifsud (Clinical Pharmacology and Therapeutics) and Mr. Mark Zammit (Clinical Pharmacology and Therapeutics)) as members.

Before the commencement of this proceeding, the Chairperson and members of the Panel declared that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review.

The athlete was legally assisted by Dr Francois Dalli

1. Preliminaries:

Considered the Request by the National Anti-Doping Commission dated the 27th August 2018 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Dylon Mula 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 the 27th August 2018;
- (ii) The request by NADO to the National Association/Federation of the alleged breach by Dylon Mula dated the 31st July 2018;
- (iii) Letter of Notification by NADO to Dylon Mula of the alleged violation of the Anti-Doping Rules dated the 31st of July 2018;
- (iv) A letter dated the 3rd of August 2018 from the Boxing Federation to Dylon Mula imposing a provisional suspension
- (v) The request dated the 12th August 2018 for a Provisional Hearing and declaration by Dylon Mula that he is not accepting the Provisional Suspension
- (vi) The Panel is discarding the letter dated the 6th of August 2018 sent by the athlete's legal representative since such has been sent Without Prejudice.
- (vii) An email dated 17th September 2018 from the Malta Boxing Association which declared that during the provisional hearings with Dylon Mula the Committee has discussed and decided to lift the provisional suspension of the athlete.

Took note of the Notice issued by the Panel to Dylon Mula to appear before the Panel on the 27th of September 2018 and answer to the accusation based on Art.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;*" and Art.3(2)(e) of L.N 17 of 2015 of the Laws of Malta: "*Tampering or attempted tampering with any part of doping control, being conduct which subverts the doping control process but which would not otherwise be included in the definition of prohibited methods. 'Tampering' shall include, without limitation, intentionally interfering or attempting to interfere with a doping control official, providing fraudulent*

information to the ADC or any other anti-doping organisation or intimidating or attempting to intimidate a potential witness;" . Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission and Malta Boxing Association.

2. Merits:

2.1 Heard and took note of the evidence given under oath during the sittings held on the 27th September 2018 during which:

(a) Defense counsel of Dylon Mula declared that the athlete was confirming that he left the doping room before the completion of the test but he is attributing his action to the lack of cooperation from the officers entrusted to collect the urine sample and to the fact that the athlete could was at the doping room for a long time and could not produce more sample than that provided;

(b) During their testimony under oath Joanna Camilleri, Charlene Attard and Johann Pace as DCO and Chaperon and Ignatius Zammit, as coordinator explained that Dylon Mula was called to the doping room to provide a urine sample together with other athletes. They all confirmed that he looked nervous and very fidgeting. He asked several times for water and was given various bottles of water to drink. At some point after producing a sample of urine he left the room without permission to collect the award. The chaperon asked him to return, and when he returned he acted rudely towards the DCOs and Chaperon and was asked several times to behave and cooperate and reminded him of his obligations and consequences if he failed to adhere to such obligations. They explained that at some point in time he couldn't produce anymore urine and was asking for more water but they told him that he shouldn't drink more otherwise such will not help him to produce more urine. At some point in time he got more nervous and just threw the sample collection vessel and decided to leave the doping control room and refused to return and finish the test.

(c) Dylon Mula athlete testified that on the 27th September 2018 and explained how he is very focused on his sports and that he leads a life dedicated on training and good nutrition and that he is willing to redo the test. He explained that during the test he produced a sample of urine and at some point in time his group were going to receive the award and so he left the doping room but when the chaperon chased him and asked him to return he went back. He could not produce more urine and asked for more water but they refused to give him more water. He was waiting with other athletes and this took a long time. He tried to produce more urine but couldn't and so he decided to leave the doping control room and not to return.

2.2 During the submissions Dr Cristina Borg Debono for NADO argued that the fact that the athlete refused to produce the required sample of 90ml and just left the room is sufficient evidence for the doping violation under Art 3(2)(c) subsist. She explains that the athlete's explanation is not justifiable for his action and that the witnesses' produced by the NADO confirm that the athlete did not cooperate with the DCOs and Chaperon to complete the test. Moreover, the fact that the athlete threw the sample collection vessel in the toilet and disturbed the process during the whole time, confirms that he was also in breach of Art. 3 (2)(e).

2.3 Dr. Francois Dalli for the athlete explained that the athlete's action was due to his lack of maturity and lack of direction on part of the DCOs, Chaperon and Coordinator present during that day. He submitted that the athlete is a young athlete, this was his first time and his case and circumstances merit a different treatment from that of other professional athletes. The legal counsel referred to other decisions delivered by this panel and submitted that contrary to those cases Mula is a young athlete who has tackled the situation not in a proper way but unlike other cases he did produce sample of urine which although it wasn't the requested amount this should show that he was not evading the test but rather acted in such way due to his ignorance of the procedures and lack of maturity.

2.3 The Panel took note of the evidence produced and the final oral submissions of the parties' legal representatives.

3. Considerations:

3.1 When considering the evidence produced it is confirmed that the athlete did not produce a full sample due to the fact that he decided to leave the doping control room. It was confirmed that the doping test was being carried out after the athlete has finished his bout and at that time there were other athletes who were also waiting to submit their urine sample. The sample collection was taking a long time and one can understand that the athlete after the competition would be under the effect of the adrenaline of the competition leading to a nervous state. However, this does not justify the athletes antagonism and lack of cooperation.

3.2 The perm of the circumstances relating to this case is that there was no sufficient reason justifying the decision of the athlete to complete the collection of the sample and thus evading sample collection. The athlete's actions amount to an intentional conduct to evade sample collection. However, there is no sufficient circumstances to amount to a breach under Art 3 (2) (e) because in this case the athlete lack of cooperation is encompassed under Art 3 (2) (c).

3.6 The Panel makes reference to the claim advanced by Dylon Mula whereby he is admitting that he did complete the sample collection but attributes this to his immaturity, adrenaline after the competition, lack of knowledge of his obligations and lack of guidance on part of the NADOs representatives. However, the obligation is always on part of the athlete to make sure to produce the required sample and to this effect the athlete himself confirms that when leaving he knew that the urine produced was not enough to complete the test.

3.7 Reference is made to the below transcript of the evidence given under oath by Dylon Mula whereby he is admitting that he knew that the urine sample produced was not enough. The athlete admits he disregarded the notice given by the DCO to complete the test and left the room with the intention not to return:

"Maria Azzopardi: Kont taf li ma tistax titlaq?

Dylon Mula: Imma kif qed nghidu, suppost johrog xi hadd mieghek barra.

Maria Azzopardi: Le le. Inti tlaqt u ma ergajtx lura. Gifieri nimmagina mort id-dar jew mort fejn shabek.

Dylon Mula: Le bqajt hemm jien. Kien ghad fadal.

Maria Azzopardi: U ma ergajtx lura.

Dylon Mula: Le ma ergajtx lura.

Maria Azzopardi: Jigifieri tlaqt bl-intenzjoni li ma tergax lura.

Dylon Mula: Ezatt.

Maria Azzopardi: Kont taf li ma tistax titlaq?

Dylon Mula: L-ewwel darba kienet tieghi. Ma kont naf xejn. Qatt ma haduli doping.

Maria Azzopardi: X'hin kont hemm ma qalulekx li kien jonqsok x'tagħmel?

Dylon Mula: Qaluli mela li kien jonqosni.

Maria Azzopardi: Gifieri kont taf li jonqsok tagħmel iktar, u li ma kienx bizzejjed?

Dylon Mula: Iva wkoll."

3.8 Having considered all the evidence produced and submissions, the Panel is convinced and is comfortably satisfied that on the 27th July 2018 the athlete's conduct results into an intentional conduct to evade sample collection. The provision laid down under Art 3(2)(c) LN17 of 2015 applies in situations whereby the athlete intentionally evades to produce the sample and therefore the Panel shall not delve into the result of the sample testing (though in this case the urine produced was not enough to test) but it is the action of the athlete which is being examined, the action to leave the test incomplete notwithstanding that he was being warned that the test was not complete. The Panel cannot tolerate this attitude irrespective whether this was the first time or not but the regulations are there to be obeyed and the athlete's conduct confirm that he did evade the test knowing the test was not complete and therefore the intentional element required in this case subsists.

3.9 The Panel takes note that the provisional suspension was contested by the athlete and lifted by the Malta Boxing Association.

4. Decision

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

4.1 Dylan Mula 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 27th July 2018, at the Corradino Sports Complex.

4.2 There is no sufficient proof of Tampering under Art 3(2)(e) of the Anti-Doping Regulations, 2015.

4.3 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 Dylan Mula a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of this decision.

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



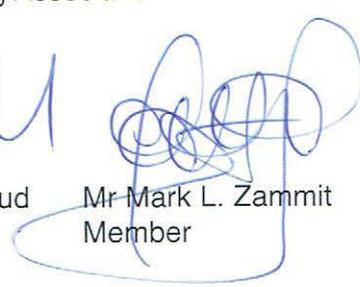
Dr. Maria Azzopardi LL.D
Chairperson



Dr. Frank Testa
Member



Prof. Janet Mifsud
Member



Mr Mark L. Zammit
Member

This 17th day of October 2018.