
Decision of the National Anti-Doping Disciplinary Panel.

**Case Ref: NADDP 2021022
1TSTALDOPOL-20**

Anti-Doping Commission (Malta)

-vs-

**Aldo Polidano (ID No. 207976M)
(Member of Badminton Malta)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi as Chairperson, and Professor Janet Mifsud and Dr. Abigail Gauci as members.

Before the commencement of these proceedings, the 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 parties confirmed that there is no objection to the composition of the Panel.

The hearing of the case was conducted through a visual telecommunication platform.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission of the 31st December, 2020 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Aldo Polidano 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 Program and other documents presented during the hearing of the case, namely:

- i. The Doping Control Officer Report Form dated 28/10/2020.
- ii. Lab Report dated 26/11/2020.
- iii. Letter of Notification by NADO to Aldo Polidano of a possible violation of the Anti-Doping Rules dated 30/11/2020.
- iv. The letter by NADO to the National Association/Federation of the alleged breach by Aldo Polidano dated 30/11/2020.
- v. The request to the Panel to schedule a hearing dated 31st December 2020.
- vi. Email from the National Federation of the provisional suspension dated 19/1/2021.
- vii. Notification of Hearing by the NADDP dated 19/1/2021 and 25/1/2021.

Took note of the Notice issued by the Panel to Aldo Polidano to appear before the Panel requesting the athlete to answer the accusation that:

- i) a prohibited substance or its metabolites or markers (presence of Indapamide classified under S5 Diuretics and Marketing Agents as a diuretic agent in the 2020 WADA Prohibited List) was detected in your

urine sample collected on the 28th October 2020 during the final match of the Mixed Doubles Ranking Tournament.

The relevant articles of the law are Article 3 (2)(a) u (b) and Article 11 (2) of L.N 17 of 2015 of the Laws of Malta.

Took note of the adjournment of the case from the 25th January 2021 to the 1st of February 2021.

Took note of the evidence as well as the submissions submitted by the parties.

2. Merits:

2.1 When the case was called on the 1st February 2021 appeared the athlete Aldo Polidano not assisted and Dr. Lucienne Attard on behalf of the NADO represented by Dr Christina Borg Debono.

2.2 During the athlete submitted that he is not contesting the finding of the test and explained that he was making use of a medication to control his high blood pressure. Mr Polidano explained that he has been playing Badminton for many years and it is part of his life. He had been using this medication for the past years upon a prescription by his medical doctor. The athlete also presented a declaration from Dr. Mark Mangion dated 23rd January 2021 which confirms that the medication that he was taking was prescribed in order to control his blood pressure. The athlete explained that he had no knowledge that the said medication which was also indicated by the athlete on the Doping Control Form was a prohibited substance under the doping regulations and he had no intention to cheat. He also admitted that he did not make any research on the medication he was taking and has been using it for years. The athlete confirmed that he had knew about the TUE and had recently applied for his daughter but did not consider such possibility in his case. He also admitted that he knew little about doping regulation and was unaware about the possibility that such medication could contain any prohibited substance. The athlete apologised and showed repentance. He stressed upon the fact that he had no intention to cheat and nor did he know that such medication was prohibited. The athlete explained that he played badminton to help him fight the stress of his daily routine life at work and thus his request was that he could be able to train though not participate at a competitive level.

The athlete brought forward two witnesses, namely Stephen Ferrante (Vice President of Badminton Malta) and Joan Cassar also a member of Badminton Malta. Both vouched for the dedication of the athlete toward Badminton and the love for the game. They also confirmed that Polidano is a person of integrity and that there is lack of knowledge within the sport of badminton on anti-doping regulations. Mr Ferrante himself explained that he makes use of medication to control blood pressure though it resulted that it is a different type. Both witnesses declared that they have known the athlete for many years. Mr Ferrante also explained that he himself did not know that the medication taken by Polidano could contain prohibited substances whilst Ms Cassar explained that although she did not know about the medication taken by Mr Polidano but was confident that Mr Polidano was taking it purely for medication purposes and not with any intention to take advantage to improve his performance.

Dr Borg Debono on behalf of the ADC pointed out that "Indapamide" is a diuretic agent classified under S5 and is prohibited in any quantities and at all times. Furthermore, Dr Borg Debono explained that the athlete is responsible for what is found in his body and he did not exercise the necessary diligence to search for a possible prohibited substance contained in the medication. Furthermore, there was never an application for a TUE and irrespective whether it is a performance enhancing substance it is listed under the Prohibited List of WADa and the athlete has a responsibility to ensure that anything entering in his body is not prohibited under the anti-doping regulations. The ADC requested the invalidation of results in the competition in case of guilt.

The parties confirmed that the athlete had accepted the provisional suspension dated 19th January 2021.

3. Considerations:

3.1 Taking into consideration the non-contestation on part of the athlete in relation to the adverse analytical finding, the Panel will delve into the arguments brought forward as to the responsibility of the athlete for such findings.

3.2 The Panel remarks that when a doping test results positive, there is a presumption that the findings resulting from the testing process are correct and thus a doping violation exists on part of the athlete. It is then up to the athlete to prove otherwise and prove his innocence or non intention. The test is a direct evidence of the alleged anti-doping breach and the responsibility of what is found in the athlete's body always lies upon the athlete. Thus, the result of a positive test provides a comfortable satisfaction to the Panel that there has been a violation on part of the athlete. The standard of comfortable satisfaction is considered as being greater than a mere balance of probability but less than proof beyond reasonable doubt whilst the athlete rebutting the presumption of a positive doping test must on a balance of probabilities convince the Panel to the contrary. Moreover, in order for the athlete to rebut this presumption, there is the need to prove that the substance entered his body without his control and that the athlete used ordinary diligence and did not act in a negligent manner.

3.3 The main issue here is "Did the athlete use ordinary diligence and was he negligent when taking such medication without any consideration of the anti-doping rule violations?"

3.4 Having considered the evidence and arguments being brought forward, the Panel concludes that on the basis of a comfortable satisfaction it has been proved that an anti-doping rule violation has been committed by the athlete and that the athlete did not prove that he acted in a diligent way in order to avoid that such prohibited substance enters his body. The doping regulations stipulate that each athlete is responsible for anything found in his/her body and therefore once the doping test results positive it is up to the athlete to explain and provide proof of his non-responsibility. It is not enough that the athlete claims that he had no intention to cheat or that the prohibited substance found in his body is not a performance enhancing substance. The Prohibited List stipulates all prohibited substance and it is easily available to all athletes and thus any athlete has a responsibility to be aware of the rules and regulations when participating in sports. The anti-doping rule violations are part and parcel of the sports regulations and any athlete should be diligent enough to be aware of such regulations and abide by them.

3.5 The Panel would like to remark that it is convinced that Mr Polidano genuinely had no direct intention to cheat but it is also true that when Mr Polidano made use of the medication did not take the necessary basic precautionary measures to ensure that such medication did not contain any prohibited substance nor did the athlete obtain a TUE. Thus, this makes him responsible of acting negligently and with no consideration of the anti-doping rule violations..

3.6 In this case when dealing with the substance found in the athlete's urine sample, 'Indapamide' is listed as a specified substance in the WADA list of prohibited substances 2020. It is named a prohibited substance in section S5 and is prohibited at all times in and out of competition. Thus the applicable sanction in this case is that envisaged under Article 11 (2) (b) and consequently also Article 10 of L.N. 17 of 2015 of the Law shall apply to this case.

4. Decision:

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

4.1 Aldo Polidano has breached the Anti-Doping Regulations, 2015 [Art. 3(2) (a) & (b)] as the presence of a prohibited substance or its metabolites or markers has been found in the athlete's urine sample A that had been collected from him in-competition on the 28th October 2020.

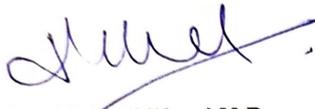
4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (2) (b) of the Anti Doping Regulations, 2015 is imposing on the athlete Aldo Polidano a suspension of ineligibility from any sports activities for a period of two (2) years commencing from the 19th January 2021 being the date of the provisional suspension.

4.3 In view of this decision Article 10 of the Anti Doping Regulations, 2015 and consequently the Panel confirms the disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes.

4.4 A copy of this decision is to be forwarded to the Badminton Malta.



Dr. Maria Azzopardi B.A. LL.D. LL.M (Sports Law)
Chairperson



Prof Janet Mifsud M.D.
Member



Dr. Abigail Gauci B.A. LL.D. LL.M (Int. Sports Law)
Member

This, the 22nd February 2021.