

**THE ATP TOUR ANTI-DOPING TRIBUNAL  
DAVID SEBOK**

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**DECISION**

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David Sebok {hereafter the “Player”} is a professional tennis player from Slovakia. He is a member of the ATP Tour {hereafter the “Tour” or the “ATP”}. John F. MacLennan, Esq. of the law firm of Smith Hulsey & Busey Jacksonville, Florida, represented the ATP in this matter.

**BACKGROUND**

1. The ATP Tour is a not-for-profit membership organization composed of male professional tennis players and tournament organizations. The ATP sanctions tennis tournaments and provides league governance and support to its member tournaments and players. Pursuant to this role the ATP has adopted rules for the conduct of tournaments and players. The ATP Tour 2004 Official Rulebook {the “Rules”} is applicable.
2. The Tennis Anti-Doping Program {“Anti-Doping Rules”} is set out within the Rules and is described at pages 87 through 115. The Anti-Doping Rules are designed to maintain the integrity of professional tennis and protect the health and rights of all tennis players. The Program includes (i) doping tests in and out-of-competition, (ii) the imposition of sanctions for Doping Offenses, and (iii) support and assistance to players when applicable. The players and tournament members of the ATP support the Program.
3. The Player being a member of the Tour is bound by all the provisions in the Rules and agrees to play by them. Under Rule B.1 the Player was bound to “and shall comply with all of the provisions of this Program, including making himself available for *Testing* both *In-Competition* and *Out-of-Competition*”.

4. The Player provided an *In-Competition* urine sample #370403 pursuant to the Anti-Doping Rules during an ATP sanctioned tournament in Milan, Italy on 7 February 2004.
5. Urine sample #370403 was analyzed by the Laboratoire de controle du dopage INRS-Institut Armand-Frappier {"the Lab"}, located in Montreal, Canada, an International Olympic Committee {"IOC"} accredited laboratory. The Lab reported its analytical results to the Anti-Doping Program Administrator {"APA"} under the Anti-Doping Rules.
6. The Lab analytical result contained in the Doping Control Report to the APA states that the A sample of the Player indicated the presence of Ephedrine with a concentration level > 50 ng/ml; Nadrolone or precursors > 25 ng/ml; Stanozolol and metabolites; and Clenbuterol.
7. Ephedrine is identified under the Anti-Doping Rules as a stimulant and is set out as a Prohibited Substance referred to in Appendix Three, of The Prohibited List. Nandrolone, Stanozolol and Clenbuterol are identified under the Anti-Doping Rules as Anabolic Agents and are set out as Prohibited Substances referred to in Appendix Three, of The Prohibited List.
8. The APA reported to the ATP that the Review Board {"RB"} had advised the APA that the Player had a case to answer under Article C (*Doping Offenses*) of the 2004 Anti-Doping Rules.
9. In accordance with the Anti-Doping Rules Mr. Richard Ings, the Executive Vice-President Rules and Competition for the ATP by letter dated 21 April 2004 provided a *Case to Answer Notification* {hereafter "the Notice"} to the Player. That same letter advised the Player that Professor Richard H. McLaren, Esq. (CAN) was to be the Chairman of the Anti-Doping Tribunal.
10. The Player in a letter dated 30 April 2004 advised Mr. Ings as follows:

*I am fully responsible for my doping delinquency. Therefore, I complexly agree with your conditions that you came out with (two years distance [sic] according to ATP rules). For apology, I used these forbidden matters just to*

*fix my injury. I never intently attempt to cheat to get better performances on competition.*

“Signed by the Player”.

11. The Chairman received on 6 May 2004 a letter dated the 5<sup>th</sup> of May from Mr. MacLennan enclosing a copy of the letter referred to in paragraph 10 advising that pursuant to the 2004 Anti-Doping Rules a decision was required to be issued. The Chairman was further advised by counsel that the Player had earned \$118 US in prize money but had received no points since the date of his giving a sample at the Milan ATP tournament.

## 12. THE RELEVANT ANTI-DOPING RULES

### A. Introduction

1. The purpose of the Tennis Anti-Doping Program (“the ***Program***”) is to maintain the integrity of tennis and protect the health and rights of all tennis players.
2. The Program, which includes the appendices hereto, encompasses:
  - a. incorporation of the doping offenses identified in the World Anti-Doping Code (the “Code”) based on the List of ***Prohibited Substances*** and ***Prohibited Methods*** that is published and regularly updated by ***WADA***, as described in Article 4.1 of the Code (the “***Prohibited List***”);
  - b. ***Testing of Samples*** collected both ***In-Competition*** and ***Out-of-Competition***;
  - c. review by an independent ***Review Board*** of ***Adverse Analytical Findings*** and other evidence of possible offenses

under this Program, to ensure that there is a case to answer before anyone is charged with commission of such an offense;

- d. the hearing and determination of any such charges by an independent *Anti-Doping Tribunal*, with the right to appeal from the decision of such tribunal to the Court of Arbitration for Sport in Lausanne, Switzerland; and
- e. where it is found that a doping offense has been committed under the Program, imposition of *Consequences* of the nature and scope specified in the Code.

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## **B. Covered Players and Events**

1. Any player who enters or participates in a *Competition*, *Event* or activity organized, sanctioned or recognized by the ATP, or who is an ATP member or who has an ATP ranking (a "*Player*") shall be bound by and shall comply with all of the provisions of this Program, including making himself available for *Testing* both *In-Competition and Out-of-Competition*. Further, for each calendar year all such players shall, as a condition to entering or participating in any event organized or sanctioned by the ATP, deliver to the ATP a signed consent in the form set out in Appendix 2.
2. Events recognized by the ATP for the purpose

of this Program include (without limitation) Grand Slam tournaments, Davis Cup ties, the Olympic Tennis event, ATP tournaments, Challenger Series tournaments, Futures and Satellite Series Circuit tournaments, (“*Covered Events*”).

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4. It is the sole responsibility of each Player and each Player Support Personnel to acquaint himself or herself with all of the provisions of the Program.

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### C. Doping Offenses

Doping is defined as the occurrence of one or more of the following (each, a “*Doping Offense*”):

1. **The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in a Player’s *Specimen*, unless the Player established that the presence is pursuant to a therapeutic use exemption granted in accordance with Article E.**
  - a. It is each Player’s personal duty to ensure that no *Prohibited Substance* enters his body. A Player is responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in his *Specimen*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the Player’s part be demonstrated in order to

establish a Doping Offense under Article C.1; nor is the *Player's* lack of intent, fault, negligence or knowledge a defence to a charge that a Doping Offense has been committed under Article C.1.

- b. Excepting those substances for which a quantitative reporting threshold is specifically identified in **the *Prohibited List***, the detected presence of any quantity of a *Prohibited Substances* or its *Metabolites* or *Markers* in a *Player's* Specimen shall constitute a Doping Offense under Article C.1, unless the *Player* established that such presence is pursuant to a therapeutic use exemption granted in accordance with Article E.

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## K. Due Process

### 1. Commencing proceedings before the Anti-Doping Tribunal

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- c. The *Participant* shall be entitled at any stage to admit that he has committed the Doping Offense(s) specified in the Notice and to accede to the *Consequences* specified in the Notice. In such circumstances, a hearing before the *Anti-Doping Tribunal* shall not be required. Instead, the Chairman of the *Anti-Doping Tribunal* shall promptly issue a decision confirming the commission of the Doping Offense(s) specified in the Notice, and ordering the imposition of such *Consequences* (including, where this Program specifies a range of possible *Consequences*, specifying what the

*Consequences* should be in that particular case). Where a range of possible *Consequences* is specified in the Program, written submissions may be made by or on behalf of the *Participant* in mitigation at the time of admission of the Doping Offense, and the Chairman of the *Anti-Doping Tribunal* shall be entitled to take those submissions, as well as any rebuttal submitted by the ATP, into account in determining what *Consequences* should apply.

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**L. Automatic Disqualification of Individual Results**

1. A Doping offense committed by a Player in connection with or arising out of an *In-Competition* test automatically leads to *Disqualification* of the individual result obtained by the Player involved in that *Competition* with all resulting consequences, including forfeiture of any medals, titles, computer raking points and prize money (without deduction for tax) obtained in that *Competition*.

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**M. Sanctions on Individuals**

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2. **Imposition of Ineligibility for Prohibited Substances and Prohibited Methods**

Except where the substance at issue is one of the specified substances identified in Article M.3, the period of *Ineligibility* imposed for a violation

of Article C.1 (present of *Prohibited Substance* or its *Metabolites* or *Markers*), Article C.2 (*Use* or *Attempted Use of Prohibited Substance* or *Prohibited Method*) or Article C.6 (*Possession* of *Prohibited Substance* and/or *Prohibited Method(s)*) shall be:

First Offense: Two (2) years' *Ineligibility*.

Second Offense: Lifetime *Ineligibility*.

However, the **Participant** shall have the opportunity in each case, before a period of **Ineligibility** is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article M.5.

## **7. *Disqualification of Results in Competitions Subsequent To Sample Collection.***

In addition to the automatic *Disqualification*, pursuant to Article L, of the results in the *Competition* that produced the positive *Sample*, all other competitive results obtained from the date a positive *Sample* was collected (*whether In-Competition* or *Out-of-Competition*) or other Doping Offense occurred through to the date of commencement of any *Ineligibility* period shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences, including forfeiture of any medals, titles, computer ranking point and prize money (without deduction for tax).

## **8. Commencement of Consequences**

Any *Consequences* set out in the decision of an *Anti-*



***Doping Tribunal*** shall come into force and effect on the date that the decision is issued, save that:

- a. For purposes of forfeiture of computer ranking points, the decision shall come into effect at midnight on the Sunday nearest to the date that the decision is issued.
- b. The ***Anti-Doping Tribunal*** shall have discretion, where fairness requires, to establish an instalment plan for repayment of any prize money forfeiture pursuant to Articles L and/or M of this Program. For the avoidance of doubt, the schedule of payments pursuant to such plan may extend beyond any period of ***Ineligibility*** imposed upon the Player.
- c. The period of ***Ineligibility*** shall start on the date that the decision is issued, provided that:
  - (i) any period during which the Player demonstrates he has voluntarily foregone participation in Competitions shall be credited against the total period of ***Ineligibility*** to be served; and
  - (ii) where required by fairness, such as in the case of delays in the hearing process or other aspects of Doping Control not attributable to the Player, the Anti-Doping Tribunal may start the period of ***Ineligibility*** at an earlier date commencing as early as the date of the ***Sample*** collection.

**REASONS**

13. By the letter of 30 April 2004 the Player voluntarily admitted that he had committed the *Doping Offences* specified in the Notice. By Rule K. 1.c. the Player has acceded to the *Consequences* specified in the Notice. In such circumstances, a hearing before the Anti-doping Tribunal is not required. Instead, the Chairman of the Tribunal shall issue this decision confirming the commission of the *Doping Offences* specified in the Notice.
14. The Player admission means that he has accepted the Lab report. The Lab report establishes that the Player had four Prohibited Substances in his Specimen. Therefore, a Doping Offense has been established and occurred under Anti-Doping Rule C. 1 and C. 1.b. Under Rule K. 1.c, at the time of the admission, there were no written submissions made on behalf of the *Participant* in mitigation. Therefore, this Tribunal under Rule L. 1 finds. that there is a forfeiture of computer ranking points and prize money (without deduction for tax) obtained at the *Competition* at which the sample was provided.
15. Since the date of the giving of the sample the Player has won \$118 in prize money and been awarded no computer ranking points. Under Rule M. 7 the Player must forfeit the prize money. It is so found by this Tribunal.
16. Under Rule M. 2 the period of Ineligibility for a violation of Rule C. 1 is a period of two years' Ineligibility for a First Offense. By rule M. 7 the period of Ineligibility imposed by this decision is to take effect from the date of issue of this decision.

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**DECISION**

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The Tribunal makes the following orders based upon the foregoing grounds and discussion in the above opinion.

1. A First Doping Offense has occurred under Rule C 1. and M. 2. Therefore, a period of *Ineligibility* for two years shall commence by Rule M. 8. as of the date of this decision.
2. Under Rule L. 1. it is ordered that there be a *Disqualification* of the individual result obtained by the Player at the ATP Tournament in Milan Italy in February 2004. The computer ranking points and prize money (without deduction for tax) obtained by the Player in that Competition are ordered to be forfeited.
3. Under Rule M. 7. all competitive results obtained from the date the positive *Sample* was collected through to the date of commencement of the *Ineligibility* period ordered herein are *Disqualified* with all the resulting consequences including forfeiture of computer ranking points and prize money (without the deduction for tax).

DATED THIS 14<sup>th</sup> DAY of MAY 2004.

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Prof. Richard H. McLaren, C.Arb  
Chairman  
ATP Tour Anti-Doping Tribunal  
Barrister and Solicitor

**SIGNED AT: London, Ontario, CANADA**