

THE FIVB DISCIPLINARY PANEL

composed by

Ms. Sabinah Clement (IVB)	Chairperson
Mr. Tomohiro Tohyama (JPN)	Member
Mr. Mounir Ben Slimane (TUN)	Member

I. FACTUAL BACKGROUND

1. The [event]¹ match between [team from a European Country, hereafter “Team 1”] and [team from another European Country, hereafter “Team 2”] [results of the match] took place on [date of the match], at 19:00, in [place, where Team 1 is located, hereafter “Team 1 Place”], [country, where Team 1 is located, hereafter “Country 1”] (hereinafter “the Match”).
2. On [date of the Match], the International Olympic Committee (IOC) Integrity Betting Intelligence System (IBIS) received an alert with regards to an alleged breach of sports integrity in the sport of Volleyball and, accordingly, informed the IBIS Single Point of Contact for FIVB, [name]. The alleged breach of the FIVB regulatory framework arose from a bet which has been placed on the Match.
3. On [date of the Match], the FIVB and [the continental federation that organized the event, hereafter “Continental Federation”] requested the [Continental Federation] Supervisor on site to read a declaration concerning betting and manipulation of matches before the start of the Match and to have it signed by the captain and the team manager of each team. The captain and the team manager of each team signed the declaration.
4. On [date], the IOC Ethics and Compliance Office provided the FIVB with a Report (hereinafter “the First Report”) confirming that two (2) players from the team [Team 2] had placed bets against their own team.
5. On [date], the IOC Ethics and Compliance Office provided the FIVB with another Report (hereinafter “the Second Report”) informing the FIVB that [the Respondent] had used the

¹ In the interest of the protection of privacy, this is a redacted version of the decision. Any reductions are marked with bold brackets.

same device, from the same geo-location, at the same time as one (1) of the players referred to in the First Report to bet on the Match.

6. On 5 May 2017, the FIVB Board of Administration approved the FIVB Disciplinary Regulations 2017, which entered into force on 8 June 2017. Relevant changes to the FIVB Disciplinary Regulations 2017 with regards to the present case were as follows:
 - The FIVB Board of Administration confirmed FIVB's exclusive jurisdiction to adjudicate disciplinary cases with regards to betting and match manipulation; and
 - The FIVB Board of Administration adopted new procedural provisions with regards to disciplinary cases.
7. On [date], the FIVB Disciplinary Panel Secretariat notified [the Respondent] of the opening of disciplinary proceedings. The deadline to provide the FIVB Disciplinary Panel with a response was [date].
8. On [date] [the Respondent] filed his statement of defense with the FIVB Disciplinary Panel Secretariat.
9. On [date], the FIVB Disciplinary Panel Secretariat informed [the Respondent] of the next steps of the procedure (i.e. whether she would be heard in person or in writing).
10. On [date], the FIVB Disciplinary Panel Secretariat informed [the Respondent] of the following:
 - a) Date of the hearing: [date]; and
 - b) Presence of an expert during the hearing: Mr. Friedrich Martens, Head of Integrity Betting Intelligence System at the IOC
 - c) Composition of the FIVB Disciplinary Panel in the present case, namely:
 - Ms. Sabinah Clement (IBV), Chairperson;
 - Mr. Mounir Ben Slimane (TUN) and Ms. Margaret Ann Fleming (SCO), Members.
11. On [date], the FIVB Disciplinary Panel Secretariat informed [the Respondent] of the time of the hearing.

12. On [date], the FIVB Disciplinary Panel Secretariat informed [the Respondent] of a change with regards to the time of the hearing.
13. On [date], the FIVB Disciplinary Panel Secretariat informed [the Respondent] that Mr. Tomohiro Tohyama (JPN) would replace Ms. Margaret Ann Fleming (SCO) in the present disciplinary case.
14. On [date], the FIVB Disciplinary Panel heard [the Respondent]. [The Respondent] was assisted by [name of the translator] for translation purposes (from English to [the language spoken by the Respondent, hereafter “the Respondent’s Language”] and [the Respondent’s Language] to English). During the hearing, [the Respondent] admitted having placed different bets on the Match and to bet on a regular basis. [The Respondent] denied any connection with the sport of Volleyball in general, and with the players listed in the First Report in particular.
15. On [date], the FIVB Disciplinary Panel Secretariat sought the assistance of the Volleyball Federation of [country, where Team 2 is located, hereafter “Country 2”] to establish whether [the Respondent] holds any position in the sport of Volleyball at club, regional or national level within the territory under the jurisdiction of the Volleyball Federation of [Country 2].
16. On [date], the Volleyball Federation of [Country 2] confirmed to the FIVB Disciplinary Panel Secretariat that [Country 2] does not hold any official position in the sport of Volleyball at club, regional or national level within the territory under its jurisdiction (hereinafter “the Third Report”).

II. COMPETENCE

17. The FIVB Disciplinary Panel is competent to hear this case as per Article 17.5 of the FIVB Disciplinary Regulations 2016 (now Article 26.5 of the FIVB Disciplinary Regulations 2017).
18. In addition to the above, the FIVB Disciplinary Panel notes that the FIVB Board of Administration clarified the exclusive jurisdiction of the FIVB with regards to betting and match manipulation cases in May 2017. Article 26.7 of the FIVB Disciplinary Regulations 2017 reads as follows:

“The Confederations are competent to impose sanctions at the continental level provided that the matter does not fall within the competence of an FIVB body are has been delegated expressly to them by the FIVB in a specific case. For this purpose, they must adopt the same procedural provisions as provided herein. FIVB has exclusive jurisdiction in:

- [...]
- Cases of betting and manipulation of competitions” (emphasis added).

19. The FIVB Disciplinary Panel further notes that the Respondent did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

III. APPLICABLE LAW

20. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily.

21. The FIVB Disciplinary Panel further notes that two set of FIVB Disciplinary Regulations may apply to the resolution of the case at hand:

- The FIVB Disciplinary Regulations 2016, which were approved by the FIVB Board of Administration on 7 April 2016 and entered into force on 8 April 2016 (hereinafter “FIVB DR 2016”); and
- The FIVB Disciplinary Regulations 2017, which were approved by the FIVB Board of Administration on 5 May 2017 and entered into force on 8 June 2017 (hereinafter “FIVB DR 2017”).

22. The Match took place on [date of the Match], i.e. when the FIVB DR 2016 were in force. Consequently, the FIVB Disciplinary Panel finds that the conduct of [the Respondent] is to be reviewed under the FIVB DR 2016. The FIVB Disciplinary Panel finds however that the FIVB DR 2017 apply to the present case insofar as they concern the procedure governing these proceedings.

23. In the Charge Letter dated [date], the FIVB Disciplinary Panel qualified the alleged violation of the FIVB DR 2016 by [the Respondent] as follows:

- Using inside information provided by [a player of Team 2, hereafter “the Player of Team 2”].

Relevant provisions: Article 13 of the FIVB DR 2016 in conjunction with Appendix B, Article B.2.4(a) of the FIVB DR 2016.

The substantives rules which are relevant for the resolution of this dispute are quoted in the following paragraphs.

24. Article 13.1 of the FIVB DR 2016 prohibited the following conduct:

“The conduct described in Appendix B, Articles B.2.3, B.2.4 and B.2.5, shall be sanctioned as a major offence, subject to the specific provisions set out below”.

25. Appendix B, Article B.2.4(a) of the FIVB DR 2016 read as follows:

“Using Inside Information for Betting purposes or otherwise in relation to Betting” (emphasis added).

26. Article 13.3 of the FIVB DR 2016 provided the following sanction with regards to corruption and related violations:

“In case of corruption proven to the comfortable satisfaction of the deciding body, the referee or other Participant and all other persons who have participated in the illegal activity shall be sanctioned with a fine of a minimum of CHF 50,000 and a suspension from participation in any official activity within the sphere of the FIVB at national, continental and world-wide level for a period between five (5) years and a life ban” (emphasis added).

27. Appendix B, Article B.1 of the FIVB DR 2016 defined the terms underlined above as follows:

[...]

“Betting”: shall mean making, accepting, or laying a wager of money or any other form of financial speculation and shall include, without limitation, activities commonly referred to as sports betting such as fixed and running odds, totalizator/toto games, live betting exchange, spread betting and other games offered by sports betting operators;

[...]

“Inside Information” means any information relating to any Competition that a Participant possesses by virtue of his position within the sport. Such information

includes, but is not limited to, factual information regarding the competitors, the conditions, tactical considerations or any other aspect of the Competition, but does not include such information that is already published or a matter of public record, readily acquired by an interested member of the public or disclosed according to the rules and regulations governing the relevant Competition;

“Participant” means any Player, Player Support Personnel, judge referee, delegate, technical official, FIVB representative, Control Committee or Appeal Sub-Committee member, competition official, National Federation team or delegation member and any other accredited person;

[...]”.

IV. PROCEDURE

28. By letter of [date], the FIVB Disciplinary Panel informed [the Respondent] (hereinafter “the Respondent”) that disciplinary proceedings were opened against him and that the FIVB Disciplinary Panel would adjudicate this case. The FIVB Disciplinary Panel provided the Respondent with the opportunity to submit his position in writing by no later than [date].

29. On [date], the Respondent submitted his position directly to the FIVB Disciplinary Panel Secretariat, whereby he wrote *“I hesitated to answer your message because I don't know English and I didn't know what FIVB means and what it represents. I needed a translator for your message and with his help I will try to give you an answer to your email. I understand your email is about a Volleyball game between [Team 2] and [Team 1] that took place in January. About this game I bet on victory for [Team 1] because that is how I thought I should risk and because I read in media that the team from [Team 2] had incomplete team from I don't know what reasons(I think diseases or injuries). In that period of time, accidentally, I traveled in [Country 1], and from coincidence I checked in the same hotel with the [Country 2] team. I must tell you that I don't know who [the Player of Team 2] is, I didn't get any information from someone from the team about losing that game I only relied on the fact that the team traveled a long way by bus from [Team 2] and that the team was not able for the game. So I decided to bet on [Team 1]. I am an old person (69 years old), amateur betting player and I didn't know this kind of situation which I sincerely don't understand it. So, in the end, i sincerely want you to understand me and I respectfully want that in the future you try*

not to write me in English because it is hard to me to understand without a translator which I also must pay him money”.

30. On [date], the FIVB Disciplinary Panel heard the Respondent by telephone. During the hearing, the Respondent admitted having bet twice on the Match (approximately EUR 100 and EUR 150 respectively) using two (2) betting companies. The Respondent indicated that he was an amateur gambler but bet on a regular basis using different betting companies. The Respondent further indicated that he was a debutant with the [event] and had read in the media that [Team 1] was a good team and that [Team 2] would be missing a certain number of key players. The Respondent emphasized that the decision to bet on the Match was his own alone. The Respondent did not recall however the device he used to place the bets. The Respondent denied any connection with the players referred to in the First Report, the team, the club .S. [Team 2] or the league in [Country 2]. The Respondent stated that he lives 200km far away from [place, where Team 2 is located]. The Respondent further stated that he had only realized that the team [Team 2] was staying in the same hotel when he recognised some of the players in the lobby taking pictures. The Respondent did not attend the Match when in [Country 1] and stated that he felt persecuted by the current proceedings.

31. On [date], the Volleyball Federation of [Country 2] confirmed that the Respondent does not hold any official position in the sport of Volleyball at club, regional or national level within the territory under its jurisdiction.

V. LEGAL CONSIDERATIONS

(a) Violation: Misuse of Inside Information

32. The FIVB Disciplinary Panel notes that Article 13 in conjunction with Appendix B, Article B.2.4(a) of the FIVB DR 2016 required the rule violation be committed by a referee or a Participant. Other “persons” who have participated in the rule violation may be sanctioned as well (Article 13.3 of the FIVB DR 2016).

33. With regard to the above, the FIVB Disciplinary Panel shall first establish whether [the Respondent] is a referee, a Participant or a “persons” within the meaning of the FIVB DR 2016 in order to discuss a potential rule violation by the Respondent.

34. The FIVB Disciplinary Panel notes that the definition of Participant under Appendix B, Article B.1 of the FIVB DR 2016 included referees (see para 27). The FIVB Disciplinary Panel is satisfied that the Respondent is not a referee nor a Participant under the definition of Appendix B, Article B.1 of the FIVB DR 2016 because the FIVB could not establish that the Respondent performed any of the roles or functions listed in this provision (see para 27) at the time of the alleged rule violation. This is notably evidenced by the Third Report.

35. The FIVB Disciplinary Panel notes that the first letter of the word “persons” in Article 13.3 of the FIVB DR 2016 was not capitalised. In light of the foregoing, the FIVB Disciplinary Panel understands that the word “persons” referred to in this provision was not a defined concept under the then Appendix B, Article B.1 of the FIVB DR 2016 but rather a reference to the word persons in Article 1 of the FIVB DR 2016, namely the list of natural and legal persons subject to the jurisdiction of the FIVB. Consequently, the FIVB Disciplinary Panel is to discuss whether the Respondent falls under this list. In this respect, Article 1 of the FIVB DR 2016 read as follows:

“For the purpose of these Regulations, the following natural and legal persons are subject to the jurisdiction of the FIVB under the terms herein established:

- *The FIVB governing institutions (Congress, Board of Administration, Executive Committee, President);*
- *The FIVB supporting institutions (Confederations, National Federations, Executive Group, Zonal Associations, Councils and Commissions);*
- *Persons elected or appointed to a position in any FIVB governing institution other than the Congress;*
- *Persons elected or appointed to a position in any FIVB supporting institution;*
- *Persons holding an honorary title granted by the FIVB;*
- *Natural and legal persons organising or involved in any way in the organisation of FIVB competitions;*
- *FIVB officials and referees;*
- *National leagues, clubs, teams and their administrators, team managers, players, coaches, technical and support personnel, and referees affiliated to a NF;*
- *The FIVB licensed agents.”*

36. The FIVB Disciplinary Panel notes that the FIVB could not establish that the Respondent performed any of the roles or functions listed in Article 1 of the FIVB DR 2016 above at the time of the alleged rule violation. This is again evidenced by the Third Report.

37. In sum, the FIVB Disciplinary Panel is satisfied that the Respondent is not a referee nor a Participant or a “persons” under the definition of Appendix B, Article B.1 of the FIVB DR 2016 and Article 1 of the FIVB DR 2016 respectively because the FIVB could not establish that the Respondent performed any of the roles and functions listed in these provisions.

38. Based on the above, the FIVB Disciplinary Panel finds that the Respondent cannot be held liable for a violation of Article 13.1 of the FIVB DR 2016 in connection with Appendix B, Article B.2.4(a) of the FIVB DR 2016 because the Respondent was not subject to the jurisdiction of the FIVB at the time of the alleged rule violation. Consequently, the FIVB Disciplinary Panel cannot not discuss whether the constitutive elements of a rule violation are met and, accordingly, shall close the present proceedings.

* * *

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. [The Respondent] ([from Country 2]) was not subject to the jurisdiction of the FIVB at the time of the alleged rule violation.
2. The FIVB Disciplinary Panel Case FIVB DP [year]-05 [the Respondent] is closed.
3. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, [date]

For the FIVB DISCIPLINARY PANEL

Ms. Sabinah Clement
Chairperson

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2,000 into the following account:

Banque Cantonale Vaudoise (BCV)

Place Saint-François 14

CH-1001 Lausanne / Switzerland

Account: T 5344.53.25

IBAN: CH33 00767 000T 5344 5325

BIC Code (Swift Address): BCVLCH2LXXX

Bank clearing: 767

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure please refer to Section III of the FIVB Disciplinary Regulations (<http://www.fivb.org/EN/FIVB/Legal.asp>).
7. A further appeal against the decision by the FIVB Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision.