



FIVB

Disciplinary Panel

Decision

In the matter of
Ms. Martha Revuelta Jiménez
(Mexico)

23 February 2016

THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2
of the FIVB Medical and Anti-Doping Regulations 2015
and composed by

Ms. Margaret Ann Fleming, Chair	(Scotland) Disciplinary Panel Vice-Chair
Mr. Mounir Ben Slimane	(Tunisia) Disciplinary Panel Member
Prof. Dr. Roald Bahr	(Norway) Medical Commission Member

at the hearing which took place via telephone conference
on 3 February 2016, 3 pm Swiss Time, heard the case identified as n. 2683535:

FACTUAL BACKGROUND

1. On 21 December 2015, the FIVB was notified by the WADA-accredited Laboratory in Los Angeles, California, USA regarding an Adverse Analytical Finding for the A-sample 2683535, which contained the prohibited substances S6b. Stimulants/oxilofrine (methysynephrine) and S6b. Stimulants/phenethylamine and its derivatives.
2. The above-mentioned urine sample was taken in-competition on 20 November 2015 in Tobago, Trinidad & Tobago during the 2015 NORCECA Final Stage Beach Volleyball competition (“Event”) and belongs to the athlete Ms. Martha Revuelta Jiménez (Mexico, born 06.09.1986; “Athlete”).
3. After having received a copy of the doping control form from the North, Central America and Caribbean Volleyball Confederation (“NORCECA”) on 8 January 2016, the FIVB contacted the Federación Mexicana de Vóleibol (“FMV”) to inform the Athlete that she had the right to request the analysis of the B sample and to attend the opening thereof.
4. On the 15 January 2015, the Athlete responded to the letter in Spanish submitting in essence the following:
 - She did not request an analysis of her B sample;

- She apologized for this situation stating that it was her first violation of FIVB Regulations;
 - She expressed her willingness to cooperate with the FIVB as needed; and
 - She provided two attachments: written statements from her and her nutritionist, P.F. Zhahorisen Stephan M. Scutella (“Nutritionist”), who appears to be a member of, among other organisations, the Federación Mexicana de Fiscoconstructivismo y Fitness Conade. Esp. En Farm. Dep.
5. By email dated 19 January 2016, the FIVB:
- acknowledged receipt of the Athlete’s email and her request to waive the opening of her B sample;
 - informed the Athlete that a hearing had been fixed for 3 February 2016 to hear her case; and
 - requested that the Athlete provide English translations of her statements.
6. On 21 January 2016, the Athlete replied as follows:
- She confirmed that she would be heard via telephone conference and that she and her interpreter would be present at the hearing;
 - She reiterated that she had been playing volleyball and beach volleyball her entire life and that this was her first violation of any FIVB regulations;
 - She was in favour of anti-doping testing and had been tested several times, cooperating each time with the FIVB;
 - She stated that her dream was to represent Mexico in the Olympic Games, and she was very concerned that she would lose the opportunity to represent her country in the Continental Cup in an attempt to qualify for the Rio Olympics;
 - She provided English translations of her and her nutritionist’s respective statements, which stated the following:
 - The Athlete’s Statement
 - She stated that she was very sorry and that this was the first time that she had committed an anti-doping offense;

- After receiving her positive test, she and her nutritionist noticed that one of the substances that she had been taking to lose weight, Lipodrene (“Supplement”), contained the prohibited substances in question;
 - Thus, she did not wish to proceed with the testing of the B Sample because she thought that there was a good chance that it would lead to a positive test;
 - The Supplement was recommended to her by her nutritionist as part of her nutritional plan, which she used in training and preparation for volleyball competitions;
 - However, she emphasised that she did not use the Supplement in competition but that the ingredients of the Supplement were still in her system when she participated in the Event;
 - The Athlete accepted responsibility and the consequences of taking the Supplement and recognised that she was responsible for what she consumed under the World Anti-Doping Code;
 - However, she emphasised that she and her nutritionist did not intend for this to happen; and
 - She stated that she was willing to cooperate in any way necessary to improve her situation and wanted to continue to play volleyball and be a role model to her family, her friends, and her country;
- The Nutritionist’s Statement
 - The Athlete started a nutrition program with him in February 2015 in order to reduce her body fat and gain lean muscle;
 - As part of that program, the Nutritionist recommended a program in which the Athlete would take multiple supplements (Vitamins C,E,B, complex creatine monohydrate,

I-glutamine, amino acids, and hardcore lipodrene) during her workouts and preparation but not in-competition; and

- The Nutritionist asked for the most lenient decision possible because the Athlete was only following his instructions.
7. On the same day, the FIVB confirmed receipt of the Athlete's email and the translations of her written statements and acknowledged that she would attend the hearing via teleconference.
 8. By email dated 1 January 2016, the FIVB requested that the hearing time be moved from 4 PM (CET) to 3 PM (CET).
 9. On the same day, the Athlete agreed to the 3 PM time for the hearing and provided the name of her interpreter, Ms. Maria del Rosario Pardo Morales.
 10. On 3 February 2016, the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB Legal Advisor Mr. Andreas Zagklis and the FIVB Legal Affairs Manager Mr. Stephen Bock, the Athlete, and the Athlete's Interpreter.
 11. During the hearing, the Athlete first reiterated the contents of her written statement, specifically, 1) that she was really embarrassed about the adverse analytical finding; 2) that she had no other problems before in anti-doping; 3) that she was in favour of anti-doping and 4) that she was on a strict diet from the Nutritionist. Subsequently, the members of the FIVB Disciplinary Panel and the FIVB Legal Advisor asked the Athlete some questions, which revealed the following information:
 - The Athlete did not know that the contents of the Supplement contained prohibited substances before she received the notice;
 - The Athlete accepted responsibility for the adverse analytical finding because she did not investigate the contents of the Supplement;
 - The Athlete stated that the last time that she took the Supplement was during her last training, which was on the day before the start of the Event, 19 November 2016;

- The Athlete stated that she only plays beach volleyball now and stopped playing indoor volleyball after 2011;
- The Athlete informed the Panel that she had a knee operation in December 2014, and the only event that she competed in, besides the Event, in 2015 was the Pan-American Games in Toronto, Canada. She was selected to participate in the Event because a fellow athlete retired before the Event, and the Athlete replaced her;
- The Athlete confirmed that the Nutritionist was a personal nutritionist, who was not part of FMV;
- The Athlete stated that she bought the Supplement from a Crossfit Centre called El Buqin in Nataplan, Mexico;
- The Athlete indicated that she did not check the label of the Supplement nor did she conduct an internet search about the Supplement. She trusted the Nutritionist completely despite recognising her responsibility to research the Supplement;
- The Athlete specified that she only told FMV that she was on a weight loss program but did not tell the FMV doctors that she was taking the Supplement because she was not in-competition;
- The Athlete took the Supplement in February and March 2015, and then started again one month before the Event;
- The Athlete stated that Dr. Medina, whose name appeared on the anti-doping form, filled in the Doping Control Form for her but she provided him with the list of supplements that she was taking, including the Supplement, which she said was listed on the Doping Control Form;
- The Athlete's last match was on 21 November 2015.

12. The Athlete concluded the hearing with a closing statement to the FIVB Disciplinary Panel. In her statement, the Athlete:

- apologized for the situation and stated that she did not know that the Supplement contained a prohibited substance;

- indicated that she trusted the Nutritionist and accepted responsibility for not researching the Supplement; and
- stated that she loves volleyball and hoped that this matter did not negatively affect her career.

LEGAL CONSIDERATIONS

13. According to the WADA 2015 Prohibited List, the substances Oxilofrine (methysynephrine) as well as Phenethylamine and its derivatives are included in the category S6b. (Stimulants) and are prohibited in-competition. Therefore, the analysis of the samples resulted in an Adverse Analytical Finding.
14. According to Article 2.1 of the FIVB Medical & Anti-Doping Regulations 2015 (“FIVB MADR”), the presence of a prohibited substance in an athlete’s bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.
15. The above-mentioned sample (Nr. 2683535) belongs to the Athlete.
16. No Therapeutic Use Exemption exists in this case, as per Article 4.4 of the FIVB MADR.
17. The Athlete has admitted that an anti-doping rule violation has occurred. Rather, she seeks to have her sanction reduced because she claims her anti-doping rule violation was not intentional. The Panel notes that the Athlete tested positive for Oxilofrine and Phenethylamine and its derivatives, which are considered Category S6b. substances.
18. According to Article 4.2.2 of the FIVB MADR, all prohibited substances are deemed specified substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Category S6b. does not fall into the categories of the abovementioned exception and, consequently, the prohibited substances in the case at hand (Oxilofrine and Phenethylamine and its derivatives) are considered Specified Substances.

19. The FIVB Disciplinary Panel notes that the period of ineligibility for a violation of Article 2.1 FIVB MADR concerning a Specified Substance shall be as follows:

- four (4) years when the anti-doping rule violation involves a Specified Substance, and the FIVB can establish that the anti-doping rule violation was intentional (Article 10.2.1.1 FIVB MADR);
- two (2) years if the FIVB cannot establish that the anti-doping violation was intentional (Article 10.2.2 FIVB MADR).

20. For purposes of the FIVB MADR, “intentional” is defined as follows:

“As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those

Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.” (Article 10.2.3 FIVB MADR)

21. Additionally, the Athlete contends that her anti-doping rule violation was not intentional because she was using the product to lose weight based on the recommendation of the Nutritionist. In order to receive a further reduction below a two year sanction, Article 10.5.1.1 FIVB MADR requires the Athlete to establish that she had No Significant Fault or Negligence. The FIVB MADR define No Significant Fault or Negligence as follows:

“The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

22. With this framework in mind, the FIVB Disciplinary Panel will now examine whether the Athlete is entitled to a reduced sanction.
23. The Athlete contends that she was taking the Supplement out-of-competition as part of a plan to reduce body fat and increase muscle mass designed by the Nutritionist. She claims that she had no idea that the Supplement contained prohibited substances until she received the letter informing her that her A Sample had tested positive for a Prohibited Substance.
24. The FIVB Disciplinary Panel first notes that because the present case involves a Specified Substance, the burden of proof for establishing that the anti-doping rule violation was intentional is on the FIVB.
25. In her testimony, the Athlete stated that she only took the Supplement out-of-competition. In particular, she contended that she stopped taking the Supplement after her last training, which occurred the day before the Event. Additionally, the Athlete has provided a statement from the Nutritionist confirming the Athlete's statement that the Supplement was only taken out-of-competition. The FIVB has not contested nor has it provided any evidence to refute the Player's assertion that she only took the product out-of-competition. Consequently, based on the above, the FIVB Disciplinary Panel finds that the Athlete is entitled to the rebuttable presumption that the anti-doping rule violation was not intentional. Therefore, based on the fact that the FIVB has failed to sufficiently rebut this presumption, the FIVB Disciplinary Panel finds that the Athlete's anti-doping rule violation was not intentional and, thus, at a maximum, she may only be subject to a two (2)-year period of ineligibility.
26. Moreover, the FIVB Disciplinary Panel must determine whether the Athlete is subject to a further reduction of the period of ineligibility under Article 10.5.1.1

FIVB MADR. If Article 10.5.1.1 FIVB MADR were applicable, the sanction for an anti-doping rule violation can range from a reprimand with no period of ineligibility and a two (2) year period of ineligibility based on the Athlete's degree of fault.

27. In looking at the Athlete's degree of fault, the FIVB Disciplinary Panel must examine the actions taken by the Athlete. Previous FIVB jurisprudence states that the FIVB Disciplinary Panel should focus on circumstances that influence an Athlete's duty of care, such as the level of the Athlete, age of the Athlete, anti-doping education, organized versus unorganized volleyball environment, whether or not the Athlete researched the product, etc. when looking at an Athlete's degree of fault for purposes of a reduction of sanction (see FIVB Disciplinary Panel Decision In the matter of Ms. Lucia Paz LOZANO LORENZINI, para. 19)
28. Examining these circumstances in the present case, the FIVB first notes that, based on publicly available information, the Player has been a professional volleyball player for at least ten (10) years, having played with Teresa Galindo in the 2005 Swatch FIVB World Tour. She stated that she has gone through doping control several times throughout her career. Additionally, in both her written statement and oral testimony, she specifically acknowledged that she had a responsibility as to what substances entered her body and to conduct research about the products that she takes. Based on this information, the FIVB finds that the Athlete was fairly experienced and was well aware of her duty of care.
29. Regarding this duty of care, the Court of Arbitration for Sport has noted the following:

“Nevertheless, the Panel considers that the arguments exposed by the Appellant to require the reduction of the period of ineligibility must be analysed in the light of the normative standard of “duty of care” which is claimable of all athletes regarding substances that they freely decide to ingest. In this regard, as one of the main principles in the context of anti-doping control in sport, it is abundantly clear that all athletes must be extremely careful with the food contents, fluids, and in general, with any products that he or she may ingest, either for nutrition or therapeutic purposes, as they may contain some substance identified on the WADA Prohibited List. As has been expressly established by CAS jurisprudence:

“In each case, the Athlete’s fault is measured against the fundamental duty which he or she owes under the Program and the WADC to do everything in his or her power to avoid ingesting a Prohibited Substance. (CAS 2011/A/2518)”
(CAS 2013/A/3431, para. 59).

30. The Athlete stated that she did not conduct any research regarding the Supplement before her positive test. It was only after she received confirmation of his positive test that she conducted internet research. Instead, she relied completely on the recommendation of the Nutritionist, who told her that she would not have an issue with anti-doping. The Nutritionist is not affiliated with FMV. The only direct sports affiliation that the Nutritionist has is with the Federación Mexicana de Fiscoconstructivismo y Fitness Conade. Esp. En Farm. Dep., which, according to publicly available information, appears to be the national federation for bodybuilding in Mexico. While it is clear that the Nutritionist failed the Athlete by incorrectly representing that the Supplement would be fine for the Athlete to take and did not warn about the possibility of testing positive in-competition, this does not abrogate the Athlete from her duty of care.
31. The FIVB Disciplinary Panel finds that the Athlete did not meet the required duty of care expected of athletes within the sport of Volleyball. The FIVB Disciplinary Panel expects volleyball athletes to – at the very least – conduct a preliminary internet search before consuming a product and contact a competent anti-doping authority. This is especially true of a product recommended by someone that is not affiliated with a national federation. Unfortunately for the Athlete, she did not consult with any anti-doping professionals or authorities prior to consuming the Supplement.
32. Thus, the FIVB Disciplinary Panel unanimously finds that the Athlete was significantly negligence under the FIVB MADR. As a result, her sanction cannot be reduced based on a finding of No Significant Fault or Negligence. Although the FIVB Disciplinary Panel has been provided no evidence suggesting that the Athlete is a cheat, based on this finding and the stricter sanctioning regime of the 2015 FIVB MADR, the FIVB Disciplinary Panel has no choice but to hold that the period of ineligibility shall be two (2) years in accordance with Article 10.2.2 FIVB MADR.

33. Given that the Athlete has continued participating in official competitions until 21 November 2015, the FIVB Disciplinary Panel finds that this period of ineligibility will start as of the date after her last competition, namely as of 22 November 2015.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Ms. Martha Revuelta JIMÉNEZ (Mexico) has committed an anti-doping rule violation (presence of the prohibited substances S6b. Stimulants Oxilofrine (methylnephrine) and Phenethylamine and its derivatives in her bodily specimen) according to Article 2.1 of the FIVB MADR.
2. A sanction of two (2) years of ineligibility shall be imposed on the athlete Ms. Martha Revuelta JIMÉNEZ, according to Article 10.2.2 FIVB MADR.
3. The period of ineligibility shall start on 22 November 2015 and end on 21 November 2017, according to Article 10.11 FIVB MADR.
4. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 23 February 2016

For the FIVB DISCIPLINARY PANEL

A handwritten signature in black ink that reads "Margaret Ann Fleming". The signature is written in a cursive style with a large initial 'M' and 'F'.

Ms. Margaret Ann Fleming
Chair

NOTICE OF APPEALS

(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical and Anti-Doping Regulations 2015 (FIVB MADR) and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 14.7 of the FIVB MADR: “Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation.”

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

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