



FIVB

Disciplinary Panel

Decision

In the matter of
Mr. Borja RUIZ MIRA
(Spain)

8 November 2013

THE FIVB DISCIPLINARY PANEL

constituted in accordance with Article 8.1.2
of the FIVB Medical Regulations
and composed by

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

at the hearing which took place via telephone conference
on 23 October 2013, 4.30 P.M. Swiss Time, heard the case identified as n. 2771366:

FACTUAL BACKGROUND

1. On 2 September 2013, the FIVB was notified by the WADA-accredited Laboratory in Athens, Greece regarding an Adverse Analytical Finding for the A-sample 2771366, which contained the prohibited substance "exogenous nandrolone metabolite 19-Norandrosterone".
2. The above-mentioned urine sample was taken in-competition on 15 August 2013 in Varna (Bulgaria) during the 2013 CEV U22 Beach Volleyball European Championship - Men, and belongs to the athlete Mr. Borja RUIZ MIRA (Spanish, born 26 July 1992, hereinafter the "Athlete").
3. After having received a copy of the doping control form by the Confédération Européenne de Volleyball, on 4 September 2013 the FIVB contacted the Real Federación Española De Voleibol ("RFEVB") and through it informed the Athlete of his right to request the analysis of the B sample and to attend the opening thereof. In the same letter, the FIVB imposed a provisional suspension on the Athlete.
4. By letter of 11 September 2013 the RFEVB, on behalf of the Athlete, requested the FIVB to have the B Sample opened and analyzed.

5. By letter of 23 September 2013 the FIVB informed the Athlete that (a) the analysis of the B-sample 2771366 confirmed the A sample analysis and provided him with a copy of the result, (b) he had the right to be heard before the FIVB Disciplinary Panel either by telephone conference or by a hearing in person, (c) he was invited to send to the FIVB a document explaining his position.
6. After a reminder sent by the FIVB, by email of 7 October 2013 the Athlete, through his representative Mr. Salvador Pastor, opted to be heard via telephone conference. By the same email Mr. Salvador Pastor, explained on behalf of the Athlete that:
 - The Athlete states that he is not guilty and swears he has never taken any prohibited substances;
 - The only supplement he has ever taken are protein shakes, but not during that competition. Therefore, he has no explanation for the positive finding;
 - He has no experience at all with doping substances, so he doesn't know if the substance he tested positive for is commonly found in food or anywhere else;
 - During the competition in question, the Athlete visited the Medical Delegate and took medicine for toothache (green pills and liquid).
7. On 23 October 2013 the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the Athlete and his representative Mr. Salvador Pastor. Also in attendance were the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB legal advisor Mr. Andreas Zagklis and the FIVB legal affairs manager Mr. Mark Bovet.
8. The Athlete and his representative answered questions from the Panel and were given ample opportunity to explain their position and requested a reduced sanction. They confirmed the written statement of 7 October 2013 and additionally stated that
 - The Athlete is very young and is an amateur athlete who has never been sanctioned in his career;
 - The Athlete did not make any further research regarding the medication he took for the toothache during the competition because, after discussing the

issue with a doctor in Spain, the Athlete was convinced that the prohibited substance did not come from the green pills and liquid taken for the toothache;

- The Athlete does not know how the prohibited substance entered his body.

LEGAL CONSIDERATIONS

9. According to the WADA 2013 Prohibited List, 19-Norandrosterone is a nandrolone metabolite and is included in the category S.1 (Anabolic Agents). As a result, it is prohibited both in- and out-of-competition.
10. According to Article 2.1 of the FIVB Medical Regulations, 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 Medical Regulations.
11. The sample Nr. 2771366 belongs to the Athlete Mr. Borja RUIZ MIRA.
12. No Therapeutic Use Exception (T.U.E.) exists in this case, as per Article 4.4 of the FIVB Medical Regulations.
13. Therefore, being the presence of the prohibited substance in the Athlete's urine undisputed, the anti-doping rule violation is established.
14. The Panel emphasizes that, according to Article 2.1 of the FIVB Medical Regulations

"It is each Athlete's personal duty to ensure no Prohibited Substance enter his or her body. Athletes are responsible for any prohibited substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is no necessary that intent, fault, negligence or knowing use, by the athlete's part, be demonstrated in order to establish an anti-doping violation under art. 2.1."

(emphasis added)

15. In addition, Article 10.2 of the FIVB Medical Regulation provides as follows:

"The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility."

(emphasis added)

16. Article 10.4 is not applicable to the case at hand because the prohibited substance found in the Athlete's sample is a non-specified substance. Furthermore, Articles 10.5.1 and 10.5.2 FIVB Medical Regulations provide for the possible elimination or reduction of the otherwise applicable period of ineligibility under exceptional circumstances only, requiring the Athlete to establish either that he bears *No Fault or Negligence* or *No Significant Fault or Negligence*, respectively. However, in all cases, the Athlete must also establish how the Prohibited Substance entered his body.
17. The Panel notes that in the case at hand the Athlete has not established how the Prohibited Substance entered his body. The Athlete has not even attempted to explain how the prohibited substance could have entered his body and openly admitted he is unable to explain the Adverse Analytical Finding.
18. In these circumstances the Panel has no option but to apply the principle of strict liability provided for in the FIVB Medical Regulations and to pronounce that no reduction of the standard 2-year period of ineligibility is possible. In this context, the Athlete's arguments regarding his amateur status and young age may not be considered by the Panel, since they can have no legal impact on the sanction to be imposed on the Athlete.
19. Thus, the Panel finds that the conditions of Articles 10.5.1 and 10.5.2 of the FIVB Medical Regulations are not met. Consequently, the sanction set forth in Article 10.2 of the FIVB Medical Regulations applies.
20. In view of the above legal analysis and the evidence on file, considering also that this is the Athlete's first anti-doping violation and that he did not participate in any official competitions since the date of his provisional suspension by FIVB on 4 September 2013.

Taking all the above into consideration

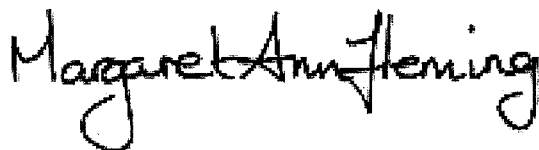
THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Mr. Borja RUIZ MIRA (Spain) has committed an anti-doping rule violation (presence of the prohibited substance 19-Norandrosterone – exogenous nandrolone metabolite in his bodily specimen) according to Article 2.1 of the FIVB Medical Regulations.
2. A sanction of two (2) years of ineligibility shall be imposed on the athlete Mr. Borja RUIZ MIRA, according to Article 10.2 of the FIVB Medical Regulations.
3. The period of ineligibility shall start on 4 September 2013 and end on 3 September 2015, as per Article 10.9 of the FIVB Medical Regulations.
4. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 8 November 2013

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 Regulations 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 18.6 of the FIVB Medical Regulations: "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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