

## **JUDICIAL AWARD DELIVERED BY THE FISA DOPING HEARING PANEL**

**sitting in the following composition**

**Members:**                 **John Boulton**  
                                  **Tricia Smith**  
                                  **Michael Williams**

**In the case of**  
**Alexandr Tufaniuc (MLD)**

### **The Facts**

The Anti-Doping Organization of Russia, RUSADA, conducted in competition testing at the All-Russian Rowing Competition in Rostov-on-the-Don 9 April 2011 in accordance with the regulations of the World Anti-Doping Code. A urine sample was collected on 9 April 2011 (the "Sample") from athlete Alexandr Tufaniuc (the "Athlete").

The sample taken from the Athlete was numbered 2585878 and recorded on the Doping Control Form. The Athlete signed this form and received a copy. The Athlete declared on the form that he had taken L-Carnitin during the seven days before the test and made no comments on the doping control procedure. The WADA accredited laboratory in Moscow received the "A" sample on 11 April 2011.

Certificate of Analysis No. 11-403-2 dated 17 April 2011 indicated that the sample showed the presence of furosemide which is on the 2011 Prohibited Substances/Methods List of the World Anti-Doping Code. Furosemide is a diuretic classified in class S5, Diuretics and Masking Agents.

RUSADA began the results management process following the notification of the Adverse Analytical Finding. The minutes of the meeting of the RUSADA Initial Review Panel dated 19 April 2011 determined that the Athlete did not have a valid Therapeutic Use Exemption (TUE) for furosemide and that no departures from the International Standard for Testing (ISL) had been established.

The Athlete was notified by RUSADA on 19 April 2011 with details of the possible anti-doping violation and of a provisional suspension from competition. The Athlete was requested in this notification letter to respond quickly regarding the B sample analysis. The Athlete responded to RUSADA in a letter dated 20 April 2011 requesting a hearing with RUSADA. He did not mention the B sample analysis in this letter. RUSADA understood the fact that the Athlete made no mention of the B sample analysis as confirmation that the Athlete did not wish to proceed with the analysis of the B sample.

RUSADA later learnt that the athlete is Moldovan, not Russian as originally presumed. The governing body of the Moscow Dynamo organization informed RUSADA that the Athlete is a citizen of Moldova. On 25 May 2011, RUSADA requested FISA to proceed with the results management of the case. The following documents in Russian were forwarded to FISA: the Doping Control Form, the Moscow Laboratory Report, the Notification to the Athlete of the possible anti-doping rule violation, the minutes of the meeting of the RUSADA Initial Review Panel, the letter to the Russian rowing federation and a letter from the Athlete.

FISA asked RUSADA to translate the above mentioned documents. RUSADA sent the translations to FISA on 2 June 2011. WADA was consulted to confirm which organization should manage the case and the reply from WADA dated 21 July 2011 stated that it was FISA's responsibility to manage the case unless particular provisions in FISA's rules according to Article 15.3 of the Code allowed for FISA to transfer the responsibility to the national federation. FISA decided as it was an international test to retain the responsibility of results management authority.

The Moldovan national federation submitted a letter to FISA dated 19 March 2012 which states that the board of the national federation had a meeting and decided to apply a one year ban to the Athlete. However FISA as stated has decided to retain results management authority of this case.

## Hearing

The Athlete responded in the questionnaire on 21 December 2011 that he wished to present his case personally in writing to the FISA Hearing Panel.

The Athlete had first submitted a letter to RUSADA on 20 April 2011, stating that he did not take any prohibited substances and that he did not understand how the prohibited substance entered his body. He stated that he is a lightweight rower and that he used "Turboslim", a tea bought at a pharmacy and L-Karnitin to lose weight.

In the questionnaire submitted to FISA, the Athlete responded that he took Turboslim Herbal Tea but that "he didn't know about the content of furosemide in it". He notes that the dose was 4 filter bags and that he took it on 7<sup>th</sup> and 8<sup>th</sup> April 2012 because he wanted to lose some weight. The athlete included the label of the Turboslim tea with the questionnaire response.

The Athlete states in the questionnaire that he was not informed by his national rowing federation of the risks and dangers from contaminated nutritional supplements. He has not signed the FISA commitment form. The athlete included the following statement: "*I took Furosemide unintentionally. While taking that substance I didn't try to improve my athletic potential. I just wanted to drive away some weight. The fact is that we don't have experts in the field of sports nutrition. Thus no one could advise me on this issue. From now on I pledge not to take any medications or inadvertent doping without a medical prescription*"

The Athlete submitted a second letter on 15 March 2012. In this letter he states that he was at the training camp without his coach and that he drank the tea with other athletes. He said that there was no one there to tell him to not drink the tea because it might contain a prohibited substance. He regrets the consequences and asks for FISA to apply a one year sanction as decided by the board of his national federation.

## **Applicable law**

### ***The applicable rules***

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (9 April 2011). These rules are consistent with the World Anti-Doping Code.

### ***The relevant rules***

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his body;
- Article 10.2 which sets a period of two years' ineligibility for a first violation for the substance here concerned, and which provides that the athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Article 10.5;

Article 10.5 which provides for elimination or reduction of the period of ineligibility based on exceptional circumstances: (10.5.1) elimination in the case of "no fault or negligence" and establishing how the prohibited substance entered his or her system; (10.5.2) reduction to no less than one half of the minimum period of ineligibility in the case of "no significant fault or negligence";

## **Merits**

According to FISA Rules and the World Anti-Doping Code, the burden of proof is on the athlete to rebut the presumption of guilt established by the presence of a prohibited substance in his body or fluid.

The Panel is satisfied that a positive test was established by the evidence of the laboratory analysis. In fact the Athlete did not dispute the findings of the test. The sanction for an anti-doping rule violation in this case is a two year period of ineligibility.

The Panel must then decide if the Athlete provided sufficient evidence of exceptional circumstances and no fault or negligence (Article 10.5) or no significant fault or negligence (10.5.2) to reduce the period of ineligibility. Under the Article the Athlete must also explain and give evidence as to how the Prohibited Substance entered his body.

Alexandr Tufaniuc's explanation of how the substance entered his body was that he drank tea made from the product Turboslim and that this product had contained the furosemide.

According to the scanned copy of the Turboslim label provided by the Athlete with the questionnaire, the Turboslim tea was produced by the Russian company Evalar as a purifying and weight loss supplement. The ingredients are said by the company to include substances such as green tea, cherry stalk, senna and cornsilk. Furosemide is not mentioned on the label. The Athlete also included a certificate from a government agency defending consumers' rights confirming the quality of the Turboslim product and that it was an original and not a fake.

With regards to his explanation relating to no fault or negligence, or no significant fault or negligence, the Panel finds that the Athlete's explanations only suggested a way that the substance could have entered his body. No evidence was presented which established how the substance furosemide came to be in his body. Furosemide was not mentioned on the label of the product Turboslim tea. The remaining Turboslim tea in the box consumed by the Athlete was not analysed in a laboratory to confirm if the product was indeed contaminated with furosemide. The Athlete did not mention Turboslim on the doping control form when tested.

The Panel finds that the Athlete's explanations relating to no fault or negligence to be insufficient.

Athletes are responsible for the medications and substances they take into their bodies. It is not a sufficient explanation to state that he probably ingested a prohibited substance through a product taken such as tea. It was the responsibility of the Athlete to make every effort to ensure that he was not taking a prohibited substance.

It is important that a national federation provides comprehensive anti-doping education to ensure that athletes know their responsibilities and rights in all circumstances. The athletes must be aware that it is their responsibility to check any substance given to them and be able to make an informed decision about taking a substance or not.

The Panel notes with concern the delay between the taking of the sample on 9 April 2011 and the delivery of this decision by the FISA Hearing Panel, however the delay does not affect the Panel's finding of a doping offence and ultimately has no bearing on the Panel's decision.

## **FOR THESE REASONS**

### **The FISA Doping Hearing Panel finds:**

1. Alexandr Tufaniuc has committed an Anti-Doping Rule Violation under the Anti-Doping By-Laws.
2. Alexandr Tufaniuc is suspended and ineligible for two years from national and international competition.
3. The period of ineligibility commences from the date of the provisional suspension, 9 April 2011.
4. This award is rendered without costs.

Lausanne, 2 April 2012

### **For the FISA Doping Hearing Panel:**

John Boulton

Tricia Smith

Michael Williams