

**AMERICAN ARBITRATION ASSOCIATION**

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In the Matter of the Arbitration between	)	
United States Anti-Doping Agency,	)	AAA 01-14-0000-4694
<i>Claimant</i>	)	
And	)	FINAL REASONED DECISION
Mohamed Trafteh,	)	AND AWARD
<i>Respondent</i>	)	

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**AWARD OF ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR (“Arbitrator”), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments and allegations of the parties, and, after an in person hearing held on November 10, 2014 do hereby render the Arbitrator’s full award pursuant to its undertaking to do so by December 1, 2014 pursuant to the relevant rules of procedure.

**1. SUMMARY**

1.1 This case involves Respondent’s first anti-doping violation. Claimant has alleged Respondent used a prohibited substance or method, thereby committing a doping offense in violation of the World Anti-Doping Code (“Code”) or International Amateur Athletic Federation (“IAAF”) rules and regulations. Claimant has also alleged Respondent traded, trafficked, distributed or sold prohibited substances in violation of the applicable WADA and IAAF rules and regulations.

1.2 The Code provides that it is within this Arbitrator's jurisdiction to determine the "appropriate Consequences" of the allegations of violations made against Mr. Trafteh if established. A provision of the Code, Article 10.3.2, dictates that the penalty Mr. Trafteh can suffer for the offenses with which he has been charged is from a minimum of four years up to lifetime ineligibility from the sport of track and field.

1.3 For reasons given more fully below, the Arbitrator has determined that Claimant has met its burden of proof and established that Mr. Trafteh was subject to and has violated Code Article 2.2 and IAAF ADR 32.3(b), Article 2.3 and IAAF ADR32.2(c); and Article 2.6 and IAAF ADR 32.2(f).

1.4 For reasons given more fully below, the Arbitrator has determined that as a result of his violations, Respondent should be declared ineligible to participate in sport-related activities for a period of four (4) years. Regarding the starting date of his period of ineligibility, the Code provides that this Arbitrator has the discretion to start Respondent's period of ineligibility earlier under certain conditions. For reasons given more fully below, the Arbitrator has determined to start Respondent's period of ineligibility from January 1, 2012.

## **2. PARTIES**

2.1 Claimant, United States Anti-Doping Agency ("USADA"), is the independent anti-doping agency for Olympic sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic Movement Testing, effective as revised August 13, 2004 ("USADA Protocol").

2.2 At the Hearing, Claimant was represented by Mr. William Bock, General Counsel of USADA and Mr. C. Onye Ikwuakor, Legal Affairs Director of USADA, 5555 Tech Center Drive, Suite 200, Colorado Springs, CO, 80919.

2.3 The Respondent, Mohamed Trafteh, is a member of USA Track and Field.<sup>1</sup>

2.4 The Respondent chose not to and did not attend the Hearing. Nonetheless, under the relevant rules Claimant was required to prove its case and satisfy its burden of proof; there is no concept of default judgment in arbitration.

### 3. JURISDICTION

3.1 The Arbitrator has jurisdiction over this doping dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act (“Act”), 36 U.S.C. §220501, *et seq.*, because this is a controversy involving Respondent’s opportunity to participate in national and international competition representing the United States. The Act states:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws. . .<sup>2</sup>

3.2 Under its authority to recognize a NGB<sup>3</sup>, the USOC established National Anti-Doping Policies, the relevant version of which was effective August 13, 2004 (“USOC Policies”), which, in part, provide:

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<sup>1</sup> USA Track and Field is the National Governing Body (“NGB”) for the Olympic sport of track & field, long-distance running and race walking in the United States. USA Track and Field is a member of IAAF and the United States Olympic Committee (“USOC”).

<sup>2</sup> 36 U.S.C. §220521.

<sup>3</sup> 36 U.S.C. §220505(c)(4).

. . .NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC funding and recognition.<sup>4</sup>

3.3 Regarding athletes, the USOC Policies provide:

. . .By virtue of their membership in an NGB or participation in a competition organized or sanctioned by an NGB, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol.<sup>5</sup>

3.4 In compliance with the Act, Article 10 (b) of the USADA Protocol provides that hearings regarding doping disputes “will take place in the United States before the American Arbitration Association (“AAA”) using the supplementary Procedures.”<sup>6</sup>

3.5 No party objected to jurisdiction or the service of the Arbitrator in this case.

#### **4. RULES AND CHARGES APPLICABLE TO THIS DISPUTE**

4.1 The rules related to the outstanding issues in this case are the mandatory provisions of the Code and the IAAF Anti-Doping Rules. The respondent is charged with:

- a) Use and attempted use of the prohibited substance erythropoietin (“EPO”) in violation of Code Article 2.2 and IAAF ADR 32.3(b);
- b) Possession of EPO in violation of Code Article 2.6 and IAAF ADR 32.2(f);
- c) Trafficking and attempted trafficking of EPO in violation of Code Article 2.7 and IAAF ADR 32.2(g);
- d) Administration and attempted administration to others of EPO in violation of Code Article 2.8 and IAAF ADR 32.2(h);

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<sup>4</sup> USOC Policies, ¶13.

<sup>5</sup> *Id.* at ¶12.

<sup>6</sup> The supplementary procedures refer to the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC’s Athletes’ Advisory Council and NGB Council. 36 U.S.C. §220522.

e) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations in violation of Code Article 2.8 and IAAF ADR 32.2(h);

f) Evading sample collection in violation of Code Article 2.3 and IAAF ADR32.2(c);  
and

g) Aggravating circumstances justifying a period of ineligibility greater than the standard sanction pursuant to Code Article 10.6 and IAAF ADR 40.6.

## **5. BURDEN OF PROOF**

5.1 The burden of proof rests with USADA to show that Trafeh violated the foregoing Rules. At the hearing, the Arbitrator ruled that the burden of proof lies with USADA to prove violations committed to the comfortable satisfaction of the Arbitrator as to each element of each charge bearing in mind the seriousness of the allegation which is made. (Code 3.1)

5.2 "Facts related to anti-doping rule violations may be established by any reliable means, including admissions." (Code 3.2)

## **6. PROCEDURAL HISTORY**

6.1 The Arbitrator and the parties held a preliminary hearing by telephone conference on August 27, 2014. At the preliminary hearing, the Arbitrator made certain rulings and resolved certain issues. The Arbitrator issued his order on August 28, 2014 establishing the briefing schedule and the Evidentiary Hearing date and location. In particular, the Arbitrator established that the Claimant shall provide its opening brief pre-hearing brief, exhibits and witness list by October 2, 2014; the Respondent shall provide his opening pre-hearing brief, exhibits and witness list by October 13, 2014; USADA was to file a reply brief by October 23, 2014; and the

Evidentiary Hearing date was set for November 10, 2014 in Los Angeles. On October 24, 2014 the venue was changed to Denver, Colorado.

6.2 The Respondent failed to provide his opening pre-hearing brief, exhibits and witness list by October 13, 2014.

6.3 On October 20, 2014 the Arbitrator was informed that on October 19, 2014 Mr. Trafteh decided to terminate the services of Mr. LaCour.

6.4 On October 21, 2014 the Respondent sent an email to the Arbitrator stating that the Respondent was not going to attend the Evidentiary Hearing. The Arbitrator forwarded the email to USADA.

6.5 On October 23, 2014 the Arbitrator contacted the parties and again, specifically asked Mr. Trafteh if he was aware that USADA had a charge against him; that Mr. Trafteh hired Mr. LaCour to represent him; that Mr. Trafteh then retired from competition; that Mr. Trafteh ended his relationship with Mr. LaCour's law firm on October 19, 2014; that Mr. Trafteh left the United States and now lives in Morocco; and that Mr. Trafteh was not coming back to the United States for the Evidentiary Hearing on November 10, 2014.

6.6 On October 24, 2014 the Arbitrator, with the approval of the parties, moved the venue from Los Angeles, California to Denver, Colorado. In the email notifying the parties of the change the parties were notified that, "Please note that the arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a postponement... Should anyone not file such proofs or replies within the time set, it is deemed to have waived its right to do so."

6.7 On October 25, 2014 Mr. Trafteh sent an email directly to the Arbitrator stating for a second time that that he was not going to attend the Evidentiary Hearing. The Arbitrator forwarded the email to USADA and AAA.

6.8 On November 10, 2014 the Evidentiary Hearing was held at Bryan Cave in Denver, Colorado. USADA was represented by Mr. Onye Ikwuakor Legal Affairs Director of USADA. Mr. Trafteh failed to attend the Hearing and failed to submit any evidence.

6.11 Victor Burgos, USADA investigator, and Matthew Fedoruk, Ph.D, USADA Science Director, submitted sworn testimony on behalf of USADA.

6.12 The Evidentiary Hearing was closed on November 10, 2014. The Arbitrator did not request post hearing briefs.

## **7. BACKGROUND FACTS**

7.1 Mohamed Trafteh (the “Respondent”) is a twenty-nine-year-old distance runner who has been competing in the sport at an elite level for at least the past five years. Respondent has been in the USADA Registered Testing Pool (“RTP”) since the fall of 2010 and according to USADA’s internal records drug tested a total of twenty times by USADA and other Code signatories. Respondent is an eight-time US road champion and was the 2013 USA Half Marathon champion, the 2013 USA 25K champion and the USA 25K American record holder.

7.2 On April 28, 2014, USADA charged Respondent with violating Articles 2.2, 2.3, 2.6, 2.7, 2.8 and 10.6 of Code as well as the corresponding provisions in the International Association of Athletics Federation (“IAAF”) Anti-Doping Rules (“IAAF ADR”). USADA’s charging decision was premised on evidence it obtained from a variety of resources, including physical evidence obtained from Respondent by the United States Department of Homeland Security

("DHS"), fabricated whereabouts records, public admissions and a partial confession given to USADA's Investigator and Legal Affairs Director

7.3 On February 8, 2014, the Respondent was detained by the United States Department of Homeland Security (DHS) while attempting to smuggle six (6) syringes of an "unknown substance" into the United States. The discovery of the syringes was made during a search of Respondent's luggage following his arrival at John F. Kennedy ("JFK") International Airport in New York from Morocco, via Paris, France, on Flight# AF 006. The DHS reported to USADA that when Respondent was questioned about the contents of the syringes he claimed to be unable to remember what they contained. As such, the syringes were subsequently confiscated by the DHS and Respondent was permitted to continue traveling to his final destination of Denver, Colorado.

7.4 Due to Respondent's status as a professional track and field athlete, the DHS transferred custody of the syringes to USADA in order to facilitate the testing of the syringes at the WADA accredited laboratory in Salt Lake City, Utah (the "Laboratory"), for identification purposes. The Laboratory identified the "unknown substance" in the syringes as recombinant human erythropoietin ("EPO"). EPO is a Prohibited Substance in the class of Peptide Hormones, Growth Factors and Related Substances, on WADA's Prohibited List and is known to be abused by athletes, and endurance athletes especially, to increase the number of red blood cells in their circulatory system which are available to carry oxygen. On March 24, 2014, following the receipt of the Laboratory's test results, the United States Food and Drug Administration's Office of Criminal Investigations formally referred Respondent's case to USADA to handle under USADA's rules.



7.5 According to USADA records, on February 13, 2014, USADA attempted to carry out an out-of-competition sample collection at Respondent's listed residence in Bouskoura, Morocco, based on the 1<sup>st</sup> Quarter, 2014, Whereabouts Filing Respondent submitted to USADA on December 31, 2013. The testing attempt was unsuccessful because Respondent was not at his residence as his Whereabouts Filing indicated he would be at that time. The Doping Control Officer ("DCO") for the testing attempt documented that he arrived at Respondent's residence at 6:00 a.m. (Western European Time) and was advised by Respondent's wife that Respondent was not available for testing because he had traveled to Oujda, Morocco, to visit his sick mother. The DCO was further advised that Respondent was not expected to return home until the following day. As indicated in the Unsuccessful Attempt Form, Oujda is approximately 630 kilometers from Respondent's residence in Bouskoura, Morocco.

7.6 While the testing attempt was ongoing, at approximately 6:37 a.m. (WET), Respondent filed an Athlete Change of Plan Form, in which he provided the following information to USADA:

*I am on an Emergency trip to visit my grandma who is at the hospital in Oujda, I arrived last night and did not get a chance to file a change of plan. I will be in Oujda for 2 days and fly to Boulder Colorado on the 15th.*

7.7 However, contrary to the representations of Respondent and his wife, as indicated by the documents USADA received from the DHS concerning Respondent's detention at JFK International Airport on February 8, 2014, at the time of the testing attempt Respondent was already in the United States. As such, the evidence clearly showed that Respondent traveled to the United States from Morocco without informing USADA of his whereabouts, that Respondent thereafter failed to update his whereabouts for several days and that when advised of the ongoing testing attempt Respondent knowingly submitted a false whereabouts update to USADA.

7.8 On February 25, 2014, USADA sent Respondent a letter notifying him of the unsuccessful testing attempt and advising him of his right to submit a written response to USADA explaining why the unsuccessful attempt should not be regarded as a Filing Failure.

7.9 On March 7, 2014, Respondent submitted a response to USADA that contained the following explanation regarding his unavailability for testing on February 13,

2014:

*The night before my missed test, I received a phone call that my grandma was very ill, I drove for 7 hours to go see her and forgot to update usada. Just my luck, next morning my wife called at 6:15 a.m and told me that the doping control was here, I went online and updated my whereabouts asap. It was an honest mistake, it happened when I was more worried about my grandmas (sic) health.*

Respondent made no further submissions to USADA regarding the unsuccessful testing attempt and on March 12, 2014, USADA informed Respondent that a Filing Failure had been declared against him.

#### 7.10 Respondent's Admissions to USADA

##### a. Interview with USADA

7.11 Victor Burgos, USADA investigator, testified under oath at the Evidentiary Hearing. Mr. Burgos' sworn testimony was clear and credible and was presented in detail. Mr. Burgos testified that on March 30, 2014, Respondent voluntarily participated in an interview with Victor Burgos and USADA Legal Affairs Director Onye Ikwuakor, during which Respondent admitted his involvement in numerous anti-doping rule violations.

7.12 The interview was conducted at an apartment in El Paso, Texas, where Respondent had indicated in his whereabouts filings he would be residing until returning to Morocco on April 1, 2014.

7.13 USADA's meeting with Respondent was prompted by the referral of Respondent's case to USADA six days prior, the evidence that indicated Respondent had intentionally submitted false whereabouts information to USADA in an attempt to evade sample collection for a period of time upon his arrival in the United States and the fact that Respondent's 2<sup>nd</sup> Quarter, 2014, Whereabouts Filing indicated that his return to Morocco was imminent.

7.14 At the outset of the interview, Respondent denied engaging in any conduct that might constitute an anti-doping rule violation. However, after USADA confronted him with evidence related to his detention and the confiscation of his EPO syringes at JFK International Airport, as well as his fraudulent whereabouts filings, Respondent eventually admitted to a multitude of doping offenses, including the use of EPO dating back to January of 2012.

7.15 Respondent told Burgos and Ikwuakor that he first purchased and used EPO in January of 2012 in order to aid in his recovery from an injury and help him more rapidly improve his conditioning prior to the competition season. Respondent admitted purchasing EPO a total of four times including: (1) in January of 2012; (2) in the summer of 2012, in advance of the Olympic Trials; (3) in early 2013, prior to his victory at the 2013 USA Half Marathon Championships and record setting performance at the 2013 USA 25K Championships; and (4) in January of 2014.

7.16 According to Respondent, it was the fourth batch of EPO that he had purchased that was ultimately confiscated by the DHS at JFK International Airport. When asked for details regarding his procurement and use of EPO, Respondent claimed that he obtained the EPO in Morocco from a friend who had no connection to sport and that he did not consult with anyone else prior to beginning or about his doping regimen. Respondent told Burgos and Ikwuakor that he conducted research on his own to determine how to use the EPO and determined the drug

could be administered by injecting the doses into the folds of his stomach or into a vein in his arm, depending on when the drug needed to be cleared out of his system.

7.17 Respondent explained that he would typically use EPO for a period of two weeks and then stop a minimum of ten (10) days prior to an event he thought might have drug testing.

7.18 Respondent denied using any other prohibited substances or methods during his athletic career or engaging in any doping activity prior to January of 2012. Respondent refused to provide any specifics regarding his supplier other than to state that the drug was provided to him by a friend in Morocco who was not a doctor or an athlete. Respondent explained to Burgos and Ikwuakor that he obtained EPO by asking his friend to pick up the drug for him but that he did not concern himself with, or instruct his friend to obtain, a particular brand of the drug. According to Respondent, each box of EPO Respondent purchased contained six (6) syringes of EPO and cost him around 2,500 Dirham.

7.19 Respondent claimed that no other individuals associated with sport were involved in his doping activities and that the EPO he transported into the United States was for his own personal use only. However, Respondent also conceded that he had first been encouraged and ultimately convinced to use EPO by a fellow distance runner he had previously trained and lived with in Flagstaff, Arizona, in 2010 and 2011. Respondent also identified several other individuals involved in sport whom he associated with and knew or strongly suspected were engaged in doping activities.

7.20 Again, according to Burgos' testimony, during the interview with Burgos and Ikwuakor Respondent also admitted that both he and his wife had knowingly provided USADA with false information concerning his whereabouts from February 8-15, 2014.

7.21 With respect to his whereabouts and whereabouts obligations during that time, Respondent acknowledged the following:

- i) That he traveled to the United States from Morocco on February 8, 2014;
- ii) That he did not provide USADA with an update on his whereabouts prior to traveling to the United States;
- iii) That he did not immediately provide USADA with an update on his whereabouts after arriving in Boulder, Colorado, his final destination in the United States;
- iv) That he did not provide USADA with an update on his whereabouts until approximately 6:37 a.m. (WET) on February 13, 2014, by which time he had received notification from his wife via Skype that a testing attempt was underway at his residence in Bouskoura, Morocco;
- v) That the information he provided to USADA, and that his wife provided to the DCO, on the morning of February 13, 2014, contained false information about Respondent's whereabouts at that time;
- vi) That the information he provided to USADA on March 7, 2014, regarding his unavailability for testing on February 13, 2014, contained false information regarding his whereabouts at the time of the testing attempt;
- vii) That he knowingly provided USADA with false information regarding his whereabouts from February 8-15, 2014, because he wished to avoid the potential consequences that could result for failing to provide USADA with accurate information regarding his whereabouts.

By the end of the interview Respondent promised he would assist USADA with investigating rule violations in the sport of track and field and would provide full and complete information concerning all the doping of which he was aware.

7.22 Again, according to Burgos' testimony, during his interview with USADA on March 30, 2014, Respondent admitted to having firsthand knowledge and strong suspicions concerning the doping activities of other athletes and athlete support personnel involved in the sport of distance running. USADA advised Respondent that his knowledge of anti-doping rule violations committed by others was of interest to USADA and explained that providing such information to USADA could result in a reduction in the otherwise applicable period of ineligibility for his doping offenses under the Code's provision regarding Substantial Assistance (Code 10.5.3).

7.23 In response to receiving information regarding the potential for a reduced period of ineligibility, Respondent agreed to provide USADA with detailed information regarding the doping activities of others of which he was aware as well as a full account of his own past doping activities. Given USADA's expectation that it would take several hours to fully debrief Respondent regarding his doping history, USADA did not insist that Respondent provide such information at the time of its initial interview with him. Nonetheless, Respondent did provide USADA with a brief overview of his understanding of the doping activities of athletes and athlete support personnel at that time as well as some of the suspicions he harbored regarding other athletes. Thereafter, USADA and Respondent agreed to arrange a later meeting at which time Respondent would provide USADA with a full report regarding his doping knowledge.

7.24 Respondent advised USADA he was scheduled to travel to California that coming Tuesday (two days hence) to visit his mother and was then traveling from California to

Washington D.C. later in the week to compete in the USA 10 Mile Championships over the weekend. Respondent told USADA that he would return to California after the race and then travel from California back home to Morocco via China on April 17, 2014. Respondent explained that his agent had arranged for him to compete in a race in China on his return trip to Morocco because his participation in the event ensured that a portion of his travel expenses would be covered by the event organizers.

7.25 Given Respondent's competition and travel schedule, Investigator Burgos made arrangements to follow up with Respondent after the meeting to discuss Respondent's availability for a follow up conversation with USADA prior to his return to Morocco. It was explained to Respondent that the purpose of such meeting would be to discuss the specifics of his agreed upon cooperation with USADA and also for him to provide additional details regarding the alleged doping activity that he was aware of in sport. Respondent indicated that he would make himself available for a follow-up discussion with USADA and provided Burgos with an alternate email address for USADA to use to communicate with him. Respondent provided Burgos with such information by sending an email from the alternate email address to Burgos' USADA email address.

7.26 Respondent was also advised that due to the nature of his doping offenses, it was likely that any sanction that was eventually imposed on him would include the disqualification of his competitive results dating back to January of 2012, meaning any prize money or awards he earned related to such disqualified results would have to be forfeited and paid back to the event organizers under the terms of his sanction and as required under the applicable rules (Code 10.8; IAAF ADR 40.8). More specifically, Respondent was advised that although USADA was not going to take any steps at that time to prevent him from participating in the U.S. 10 Mile

Championships or in the race in China, under the applicable rules, he would not be entitled to keep any prize money he earned from those events.

7.27 Following the meeting in El Paso, Investigator Burgos sent Respondent an email on the afternoon of March 30, 2014, asking Respondent to respond with his availability to speak prior to his trip to California. Respondent responded to Burgos via email that same afternoon and stated that he would call Burgos the following afternoon.

7.28 Respondent next contacted Burgos on the morning of April 1, 2014. In his email, Respondent apologized for not calling Burgos the previous day and vowed to call Burgos “asap.” In the same email Respondent informed Burgos that he was having technical issues with the USADA whereabouts system and asked Burgos to assist him in submitting his whereabouts update regarding his upcoming trip to California. Burgos responded later that morning, advising Respondent that the information was being forwarded to the appropriate individuals at USADA for handling. Despite Respondent’s assurances that he would call Burgos immediately after sending the email concerning his whereabouts issues, Respondent did not call or otherwise contact Burgos for more than two days.

7.29 On the evening of Thursday, April 3, 2014, Respondent emailed Burgos to thank him for his assistance in submitting his whereabouts information and asked that Burgos “Keep [him] updated on how things are going.” Burgos responded the following morning by asking Respondent to provide a time that the two of them could speak that day and inquiring whether he could contact Respondent at his mother’s residence, where Respondent was staying during his visit to California, or via Skype. When Respondent failed to respond in a timely manner, Burgos followed up with an email the following afternoon and advised Respondent that they needed to



speak as soon as possible on the coming Monday and requesting that Respondent respond with his Skype contact information and a time when he would be available to speak.

7.30 Respondent responded to Burgos' email on Sunday, April 6, 2014, advising Burgos that he preferred to communicate via email because the microphone on his computer did not work.

7.31 Thereafter, Respondent and Burgos engaged in an ongoing email dialogue regarding Respondent's availability to meet with USADA. In the email exchange, which unfolded over the course of several hours, Burgos made repeated attempts to arrange a meeting between Respondent and USADA prior to Respondent's scheduled departure to China on April 17, 2014, whereas Respondent steadfastly refused to meet with USADA prior to his departure or any earlier than May of 2014.

7.32 In the final email in the exchange, Respondent indicated for the first time that he was no longer willing to cooperate with USADA unless USADA agreed to pushback any follow-up discussions regarding his knowledge of doping in sport by one month. Moreover, in an act that appeared designed to signal the seriousness of his willingness to back out of his agreement to cooperate with USADA, Respondent stated that he was prepared to contact the media in order to publicly admit to his doping transgressions and announce his retirement from the sport.

7.33 Burgos resumed the email conversation with Respondent on the afternoon of April 7, 2014, and informed Respondent that postponing USADA's investigation for one month was not a realistic option and that USADA would take immediate steps to initiate disciplinary proceedings against him if he failed to make himself available for a follow-up conversation. Respondent responded the following afternoon by advising Burgos that his attorney would be contacting USADA. Approximately three minutes later, Respondent sent a follow-up email

informing Burgos that he had withdrawn from the event in China due to an injury and was now planning to return to Morocco several days earlier than originally anticipated. *Id.* (USADA 00063).

7.34 Three days later, on April 11, 2014, USADA formally initiated the present action against Respondent.

7.35 On June 26, 2014, a statement attributed to Respondent was published at [www.LetsRun.com](http://www.LetsRun.com). The statement was reportedly provided to the website by Respondent's then attorney, Jonathan LaCour, and incorporated into an article by [www.LetsRun.com](http://www.LetsRun.com) contributor Robert Johnson. Respondent's statement is copied in full below:

*As an elite runner, former U.S. Road Champion, and proud-USA representative, it is with great sadness that I announce my retirement. As many of you might recall, I had many great years of injury-free and successful running that allowed me to acquire several road racing and track & field wins. Unfortunately, and as many elite athletes have experienced before me, a number of frustrating and serious injuries have plagued my ability to train, race, and remain competitive over the course of these past eighteen months. Against my better judgment and after hours of discussions, I made an unwise decision to purchase EPO, a USOC banned substance, so that I could train in effort to return to my previous form. During my return trip home after purchasing the EPO, I was stopped by the United States Anti-Doping Agency and they discovered the banned substance. Since that time, they have initiated formal proceedings against me and threatened to impose a lifetime ban.*

*I would like to publicly state that since 2008 I have been one of the most sought after targets in our sport and have never failed a drug test. I was stopped before I was able to use EPO, I never previously used EPO and if I had the financial resources to fight this case, I am confident that I would prevail. Unfortunately, our sport does not provide the wealth that some other sports do, and for the sake of the financial future of my family, I must simply retire and take whatever steps are necessary to provide a stable and secure life. Although I would have loved to return to my old form and compete in the 2016 Olympics for the United States, it was not meant to be. Track & Field has been the sole focus of my life for a long time. I will miss the moments of triumph and joy, the friends I made along the way, and the ability to represent my country as a first generation American trying to live his dream.*

*Mo Trafteh*

## Retirement Statement of Mohamed Trafeh<sup>7</sup>

Although Respondent's statement incorrectly identified USADA rather than the DHS as the organization that confiscated his EPO, and contains claims that directly contradict his prior admissions to USADA regarding his past doping offenses, the statement does contain an unambiguous public admission of anti-doping rule violations.

7.36 First, Respondent's admission that he "...made an unwise decision to purchase EPO..." clearly establishes that he possessed a prohibited substance in violation of the applicable rules. Second, when considered in combination with the admission above, Respondent's admission that "[he] was stopped before [he] was able to use EPO..." establishes that he also violated the provision barring the attempted use of a prohibited substance as well because he failed to take any steps to relinquish the EPO prior to its discovery by the DHS. Finally, Respondent's admission that his EPO was discovered "[d]uring [his] return trip home after purchasing the EPO..." clearly indicates that he was transporting or attempting to transport a prohibited substance at the time of the EPO discovery.

7.37 Because the athlete did not participate in the hearing, the evidence provided by USADA was uncontroverted and the Arbitrator had to accept it in evidence.

## 8. LEGAL ANALYSIS

### 8.1 Burden and Manner of Proof

The Code provides that USADA "shall have the burden of establishing that an anti-doping rule violation has occurred." Code, Art. 3.1. The standard of proof is whether USADA "has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made." *Id.* This standard requires proof

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<sup>7</sup> Robert Johnson, *Mo Trafeh – American Record Holder At 25K – Caught With EPO, Is Retiring From The Sport* (June 26, 2014), <http://www.letsrun.com/news/2014/06/mo-trafeh-american-record-holder-25k-caught-epo/>

“greater than a mere balance of probability but less than proof beyond a reasonable doubt.” *Id.* Anti-doping rule violations can be established “by any reliable means.” Code, Art. 3.2.<sup>8</sup> Hence, there are many ways in which an anti-doping rule violation can be established, including through an admission, the testimony of witnesses, an adverse inference or other circumstantial evidence.

8.2 Many cases illustrate that circumstantial or testimonial evidence can establish an anti-doping rule violation without proof of a positive drug test. For instance, in *USADA v. Montgomery*, CAS 2004/O/645, the CAS Arbitrator found an anti-doping rule violation based on a single admission of use to a single witness. Likewise, in *USADA v. Gaines*, CAS 2004/O/649, the Arbitrator also relied exclusively on the testimony of a fellow athlete to find an admission by sprinter Chryste Gaines and conclude that she had committed an anti-doping rule violation. In *USADA v. Leogrande*, AAA No. 77 190 00111 08, the Arbitrator found that a cyclist had violated sport anti-doping rules based on corroborating, but not conclusive, scientific evidence, an assortment of documentary evidence from an individual that had provided the cyclist drugs, and testimony concerning admissions made by the cyclist. In *Leogrande* USADA produced a photograph of EPO vials in the possession of the cyclist. Finally, in *USADA v. Block*, AAA No. 77 190 00154 10 the Arbitration Panel found that track and field coach and agent Mark Block had engaged in trafficking based on admissions made by Mr. Block in a series of emails exchanged between Mr. Block and Victor Conte in 2002 and 2003, as well as training schedules and other evidence corroborating the emails. The foregoing cases show the Code’s clear intent

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<sup>8</sup> “[I]n no anti-doping regulation ... can a rule be found stating that an adverse analytical finding (i.e. positive testing) is the only way of proving the use of doping substances or methods. As a matter of fact, all anti-doping regulations sanction as doping violations behaviours - such as trafficking of forbidden substances, or refusal to submit to doping controls - which, by definition, do not require any positive testing.” *Comitato Olimpico Nazionale Italiano (“CONF”)* (CAS 2005/C/841), p. 24, ¶73.

that “[f]acts related to anti-doping rule violations may be established by any reliable means, including admissions.” Code, Art. 3.2.

8.3 Under WADC Section 3.2.4, adverse inferences may be taken against an accused individual as follows:

The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the Athlete or other Person who is asserted to have committed an anti-doping rule violation based on the Athlete’s or other Person’s refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the Anti-Doping Organization asserting the anti-doping rule violation.<sup>9</sup>

Unlike the respondents in *Bruyneel*, the Respondent here does not face considerable legal proceedings or actions in other jurisdictions and his testimony would not create an unreasonable hardship or prejudice his defense of those actions.

8.4 Additionally CAS arbitrators have long recognized the propriety of imposing an adverse inference against a respondent in an anti-doping case who failed to appear, failed to respond or failed to cooperate in the investigation of a case against them. In *Lazutina v. IOC* an athlete failed to appear and, as a result, the Arbitrator drew the adverse inference that she had intentionally ingested the prohibited substance found in her blood. The Arbitrator held that Ms. Lazutina did not give evidence and there has been no explanation from her as to how that prohibited substance came to be in her blood. In the light of that failure to explain, the Arbitrator concludes that the prohibited substance was in Ms. Lazutina’s blood as a result of the intentional exogenous ingestion by her. *Lazutina v. IOC*, CAS 2002/A/370 ¶9.10.

## **9. BRIEF DISCUSSION CONCERNING RULE VIOLATIONS CHARGED**

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<sup>9</sup> USADA v. Johan Bruyneel, Pedro Celaya Lezama, and José Martí Martí AAA Case Nos. 77 190 00225 12, 77 190 00226 12 and 77 190 00229 12

## 9.1 Use or Attempted Use

Article 2.2 of the Code provides that the following constitutes an anti-doping rule violation:

### 2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material, it is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.

9.2 The Code defines the term "Use" as "the utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method" and provides that the "Use or Attempted Use of a Prohibited Substance may be established by any reliable means" including "admissions by the Athlete," "witness statements," or "documentary evidence."

9.3 The Code defines "Attempt," which is a potential element of three of USADA's charges against Respondent as:

Purposefully engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renounces the *Attempt* prior to it being discovered by a third party not involved in the *Attempt*.

9.4 There are numerous cases in which athletes have been found to have committed anti-doping rule violations for the use or attempted use of a prohibited substance without a positive

test result. See, e.g., *USADA v. Montgomery*, CAS 2004/O/645, (anti-doping rule violation based on a single admission of use to a single witness); *USADA v. Gaines*, CAS 2004/O/649, (anti-doping rule violation based on athlete's admission of use to a single witness); *ASADA v. Wyper*, CAS A4/2007 (concluding that athlete's violation of attempted use was established due to evidence of athlete's researching, ordering and paying for prohibited substances, even though the drugs were seized by customs officials before delivery was completed to him); *USADA v. Leogrande*, AAA No. 77 190 00111 08, (anti-doping rule violation based on testimony of admissions made by cyclist and corroborating scientific and documentary evidence).

9.5 In the *Let's Run* article Respondent has admitted that he engaged in the attempted use of EPO by purchasing EPO in January 2014 and took affirmative steps to use the prohibited substance, even though he was ultimately prevented from carrying out his plan by the confiscation of the drug by DHS upon his arrival in the United States on February 8, 2014.

#### 9.6 Possession

"Possession" is defined as:

The actual, physical Possession, or the constructive Possession [which shall be found only if the Person has exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists]; provided, however, that if the Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which the Prohibited Substance or Prohibited Method exists, constructive possession shall only be found if the Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on Possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have Possession and has renounced Possession by explicitly declaring it to an Anti-Doping Organization. Notwithstanding anything to the contrary in this definition, the purchase [including by any electronic or other means] of a Prohibited Substance or Prohibited Method constitutes Possession by the Person who makes the purchase.

9.7 Respondent engaged in possession when he purchased and thereafter exercised exclusive control of six (6) syringes of EPO when he was detained by the DHS at JFK International Airport on February 8, 2014. Additionally Respondent admitted in the *Let's Run* article that he purchased EPO.

#### 9.8 Evading

Article 2.3 of the Code states that “refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection” shall be an anti-doping rule violation. The Comment to Article 2.3 provides an illustration of “evading” by explaining that “it would be an anti-doping rule violation if it were established that an Athlete was hiding from a Doping Control official to evade notification or Testing.” The Comment further explains that the doping offense of evading “contemplates intentional conduct by the Athlete.”

9.9 Respondent knew he would be traveling to the United States well before he left Morocco and had ample opportunity to update his whereabouts information to ensure he could be located for testing while in the United States. However, rather than provide such information to USADA as required by Respondent’s inclusion in the USADA RTP, Respondent deliberately withheld information from USADA regarding his planned travel to the United States and then after arriving in the United States knowingly provided USADA with false information regarding his whereabouts, all for the purpose of evading notification or testing for a period of time upon his arrival in the United States from Morocco in February 2014.

### **10. Possible Sanctions**

10.1 A finding that the Respondent has only engaged in the *Use or Attempted Use* or *Possession* of a prohibited substance, or that Respondent intentionally committed the violation of



evading *Sample* collection warrants the imposition of a two-year period of ineligibility at a minimum. If there are aggravating circumstances that sanction could be increased to four years.

The Arbitrator took into consideration the provisions of Article 10.6 Code, effective as of January 1, 2009. The comment to Article 10.6 “Aggravating Circumstances Which May Increase the Period of Ineligibility states:

Examples of Aggravating Circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation

10.2 The Arbitrator is of the view that USADA has met its burden of proof in regard to several of the charges against the Respondent.

10.3 In this case:

1. Respondent has admitted that he purchased EPO prior to the seizure of the drug in February 2014;
2. Respondent had possession and transported a prohibited substance when he transported six syringes containing EPO in his luggage from Morocco to the United States;
3. Respondent admitted to intentionally providing USADA with false or misleading information regarding his whereabouts in order to avoid having to submit to testing;
4. Respondent, even at this late stage, has refused to accept full responsibility for his past doping offenses or take redemptive measures to help stem future occurrences

of prohibited doping activity in sport, and he refused to participate in these proceedings;

10.4 The Arbitrator is of the view that aggravating circumstances exist here. In aggravation, the Arbitrator finds that the Athlete committed the anti-doping violation as part of an individual doping scheme involving possession of multiple Prohibited Substances and the Athlete engaged in deceptive and obstructive conduct to avoid the detection of an anti-doping violation.

## **11. DECISION AND AWARD**

On the basis of the foregoing facts and legal aspects, this Arbitrator renders the following decision:

11.1 Respondent has committed a doping violation under Code Article 2.2 and IAAF ADR 32.3(b) and Article 2.6 and IAAF ADR 32.2(f). Aggravating circumstances exist here sufficient to impose more than the usual two year ban.

11.2. The following sanctions shall be imposed on Respondent:

11.2.1 Respondent shall receive a period of Ineligibility (as defined in the Code) of four (4) years commencing January 1, 2012 and ending on December 31, 2015.

Respondent shall be disqualified from all sporting events in which he participated from the period January 1, 2012 to the date of this ruling. Furthermore, all benefits, awards, titles, medals, points, or remuneration from his participation in sport that flowed to Mr. Trafteh, from the period January 1, 2012 to the date of this ruling, shall be deemed forfeited and shall be returned to the relevant body.

11.2.2 During his period of ineligibility, in addition to all other penalties or restrictions flowing from his Ineligibility, Mr. Trafteh is prohibited from participating in

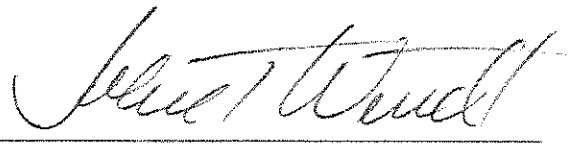
and having access to the training facilities or programs of the USOC and any NGB, or other programs and activities of the USOC and any NGB, including, but not limited to, grants, awards, or employment pursuant to the USOC Policies.

11.2.3 The parties shall bear their own attorney's fees and costs associated with this arbitration.

11.2.4 The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Arbitrator, shall be borne as incurred.

11.2.5 This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: December 2, 2014

A handwritten signature in cursive script, appearing to read "John T. Wendt", is written over a horizontal line.

John T. Wendt, Arbitrator