

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

USADA, Claimant

AAA No. 30 190 00354 03

and

Hiram Cruz, Respondent

AWARD AND DECISION OF THE ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and, after a hearing held on August 20, 2003, do hereby render its full award pursuant to its undertaking to do so by August 29, 2003.

1. Introduction

1.1 The Claimant, 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 (AUSADA Protocol@).

1.2 The Respondent, Hiram Cruz, is a top ranked member of the United States Judo Association. He is currently ranked number one in the 55g weight category, and has been ranked as low as number eleven in the 60k weight category.

1.3 The International Judo Federation (AIJF@) is the international federation for the sport of judo whose regulations recites that, *inter alia*, it "condemns competitors" use of prohibited substances and methods for reasons of fairness and health. (USADA Ex.4, p1.)

1.4 Respondent is subject to testing by USADA. (USADA Ex.1.)

1.5 Respondent has been in the USA Judo Out-of-Competition ("OOC") testing pool since the first quarter of 2001. He was notified that he was required to participate in the testing program on or about November 26, 2000, and he has acknowledged having executed the receipt of such notice. (USADA Ex.24B.)

2. The Applicable IJF Rules.

2.1 Under the USADA Protocol and the AAA Supplementary Procedures for Arbitration Initiated by USADA ("AAA Supplementary Procedures"), applicable to this proceeding, the IJF Regulations apply, including the provisions relating to prohibited substances, doping, unannounced testing, and sanctions. The Regulations applicable to this case include the following:

1. Doping (the uses of prohibited substances and prohibited methods) is strictly forbidden.
Doping is ...
 - 2) the presence in the competitor's body of a Prohibited Substance or evidence of the use of thereof or evidence of the use of a Prohibited Method.
2. DEFINITION OF DOPING
Doping is defined as a competitor's use:
- of one of the forbidden doping substances contained in the list drawn up by the IOC Medical Committee....

(USADA Ex.4, pp. 2-3.)

2.2 The list of IJF prohibited substances is identical to the IOC List of Classes of Prohibited Substances and Methods drawn up by the IOC Medical Commission. (USADA Ex. 4, p.3.) The IOC List expressly classifies androstenedione as a prohibited anabolic agent. (USADA Ex. 3, Appendix A, p.2.)

3. Background and Facts.

3.1 On February 18, 2003, as part of an out-of-competition drug test, Respondent provided a urine sample at the request of a USADA Doping Control Officer. The UCLA accredited laboratory ("UCLA Lab"), which conducted the test, received the sample on February 20, 2003. On February 21, 2003, the laboratory screening test performed from the AA@ sample of Respondent's urine specimen indicated the presence of a prohibited substance. The A confirmation testing was performed on February 28, 2003, and it revealed the presence of Hydroxy-androstenedione, a metabolite of the prohibited anabolic steroid, 4-androstene-6 α -ol-3,17-dione(=6 α OH-androstenedione)("Hydroxy-androstendione")("androstendione"), in each of three "aliquots" from the "A" sample from which the three separate analyses were performed. (USADA Ex. 5.) This finding was reported to USADA. The Respondent was notified of such finding by letter of March 12, 2003. That letter advised Respondent that if he chose not to accept the "A" sample test results he had the right to request and observe the "B" sample analysis. On March 25, 2003, the UCLA Lab tested the "B" sample. The three replicates from the B sample also were positive for Hydroxy-androstenedione. The UCLA Lab reported that Respondent's urine sample was positive.

3.2 By letter of April 22, 2003, the USADA Anti-Doping Review Board recommended *inter alia* the minimum two-year suspension from the date the positive sample was collected, February 18, and the retroactive cancellation of all competitive results which occurred on or after that date. Respondent was further advised of his right to request a hearing before a panel of North American Court of Arbitration for Sport (CAS) arbitrators who are also American Arbitration Association (AAA) arbitrators in accordance with the USADA Protocol to contest the sanction proposed by USADA. Respondent advised USADA of his election to proceed to

arbitration, which USADA formally initiated in its May 5, 2003 letter to AAA and IJF. (USADA Ex. 9.)

3.3 During the course of three preliminary telephone conferences during a period from June 26, 2003 to August 15, 2003, issues relating to the hearing were discussed. Specifically, on July 15, 2003, the panelists again discussed with Respondent the right that he had to provide an interpreter at the hearing. (See USADA Ex. 1, p.24.) Respondent advised the panelists and Claimant that he understood English and did not need the services of a formal interpreter. The panelists advised Respondent that he could bring a friend or family member to the hearing to assist him with interpretation. Respondent acknowledged that he understood this information.¹

3.4 The evidentiary hearing took place on August 20, 2003, in Jacksonville, Florida.

4. The Evidentiary Hearing

4.1 The Claimant, USADA, was represented by counsel by Travis T. Tygart, Director of Legal Affairs, USADA. Witnesses for USADA were Anthony Mennellas, Doping Control Officer for USADA, and, by telephone, William Rosenberg, Executive Director of USA Judo, Dr. Jeff Podraza, Drug Reference Line Manager for USADA, Dr. Larry D. Bowers, USADA's Senior Managing Director, Technical and Information Resources, Dr. Don H. Catlin, Director of the UCLA Olympic Analytical Laboratory, and Dr. Sanja Starcevic, certifying chemist at the UCLA Lab.

4.2 The Respondent, Hiram Cruz, testified on his own behalf. He is an intelligent, educated and articulate 32 year old who has distinguished himself in competitive judo beginning

¹ The panel was cognizant of the fact that the Respondent represented himself, although he had an attorney prepare his pre-hearing Brief. The panel recommends that USADA and the various sports federations pursue the adoption of a pro bono roster of attorneys for those athletes who are unable to otherwise afford the services of an attorney at these hearings.

at a very young age. He provided the written statements of John Fiege, the owner of the training facility, Gentle Way, Roberto Santiago, a witness to the testing, and his medical records, including those of his physician. He also included a statement as to the medications, both prescription and non-prescription, that he had taken in the last sixty days.

4.3 The hearing was governed by the Commercial Rules of the AAA, amended as of January 1, 2003, as modified by the AAA Supplementary Procedures, referred to in the USADA Protocol as Annex D. The parties filed pre-hearing briefs and numerous exhibits, all of which were deemed admitted in evidence (as were the written statements submitted by Mr. Cruz), in accordance with the panel's procedural orders. The parties made opening statements and closing arguments, and the record was closed on August 20, 2003, after the conclusion of the hearing. All witnesses were sworn in.

4.4 Respondent through his pleadings, pre-hearing brief, oral argument and testimony given at the evidentiary hearing contends that the doping charge should be dismissed for a variety of reasons.

5. Legal Analysis and Decision

5.1 The panel is obligated, in accordance with the USADA Protocol contractually binding upon the parties, to apply the IJF Rules as to the definition of doping, as to the consequences of a doping offense, and as to whether there are exceptional circumstances present for a possible modification of the sanction. (USADA Ex.4.)

5.2 The IJF Regulations prohibit even the presence in a competitor's body of any prohibited substance. (USADA Ex. 4, p.3.) The IJF Regulations allow only a limited defense to a positive doping offense. One such defense is the use of a forbidden substance on medical grounds. *Id.*, p. 8.

5.3 The applicable IJF Rules clearly define doping as a strict liability offense; that is, a doping offence has been committed where a prohibited substance, in this case the Hydroxy-androstenedione was present in the athlete's urine sample, whether or not the athlete *knowingly* used the prohibited substance. (USADA Ex.4, p. 3.) In other words, proof of the presence of a prohibited substance in the athlete's urine sample is all that is required for an offence to be established.² It is, therefore, incumbent upon USADA, in order to prevail, to meet its burden of proving to the comfortable satisfaction of the panel that the substance Hydroxy-androstenedione³ was properly identified in Respondent's urine sample.

5.4 The strict liability rule inherent in the IJF Rules has been confirmed previously.⁴ Other sports federations' similar provisions have likewise been confirmed in several CAS, AAA/CAS and International Federation decisions notwithstanding the quasi-criminal nature of the sanctions applied to an offence.⁵

5.5 Claimant clearly demonstrated to the panel's satisfaction that a prohibited substance was found in Respondent's test sample resulting in a doping offense within the meaning of the IJF Regulations. (USADA Ex. 4 and Ex.3, Appendix A, p.2.) The extensive documentation provided to Respondent demonstrates presumptively that the laboratory analysis

² This is consistent with the Olympic Movement Anti-Doping Code, Chapter II, Article 2.

³ The IJF Regulations specify that its lists of forbidden substances and procedures is identical to the IOC list. (USADA Ex. 4, p.) The OMADC, Appendix A, p.2, specifically lists androstenedione and related substances. (USADA Ex.3.)

⁴ See *B v. IJF (CAS 98/214)*.

⁵ See *Poll v. FINA (CAS 2002/A/399)*; *Meca-Medina v. FINA (CAS 99/A/234)*; *UCI v. Moller (CAS 99/A/239)*; *UCI v. Outchakov (CAS 2000/A/272)*; *Janovic v. USADA (CAS 02/A/360)*; *USADA v. Dickey (AAA 30 190 00341 02)*; *USADA v. Moninger (AAA 30 190 00930 02)*; and *Brooke Blackwelder v. USADA (AAA No. 30 190 00012)*.

was correctly conducted, that Respondent's urine specimen had not deteriorated or been contaminated, and that the proper laboratory procedures had been followed. Moreover, the results of the UCLA Lab, an IOC accredited lab, are presumed to be scientifically correct, and the tests and analyses were presumed to have been conducted in accordance with the highest scientific standards. (USADA Protocol, Ex.1, p.9.)

5.6 The testimony of Mr. Mennella conclusively established that the OOC testing was performed in accordance with USADA protocol. Chain of custody from the sample collection through testing conformed to USADA and IOC standards and the IJF OOC Provisions.

5.7 The testing performed by the UCLA Lab on the A & B Samples was conducted in accordance to prevailing and acceptable standards of scientific practice. (USADA Ex. 1.) Dr. Larry Bowers reviewed the UCLA Lab documentation and testified that he concurred with the findings. He also testified that testing protocol used by the UCLA Lab conformed with IOC requirements.

5.8 Dr. Don Catlin testified that the B confirmation was performed consistent with the OMADC and IOC procedures. (See USADA Ex. 3.) The B Sample analysis was performed by different laboratory personnel within 30 days of the A Sample confirmation analysis.

5.9 Accordingly, USADA has met its burden of proving a doping offense was established from properly conducted testing and analyses of Respondent's urine sample by the accredited UCLA Lab.

5.10 It is incumbent, therefore, on Respondent to establish his defenses. Respondent testified at length that he did not take any prohibited substances, that he had not taken any dietary supplements, and that the list of prescription and nonprescription medications that he had

provided to USADA for purposes of the hearing was true and correct.

5.11 Dr. Podraza testified that he was familiar with the ingredients contained in Respondent's listed prescription and non-prescription medications and that none of them would cause the positive reading. Dr. Bowers concurred and testified that, based on his background and experience, the positive result was consistent with a result that an athlete would have after ingesting a supplement containing androstene. He also testified that the metabolite found in Respondent's urine is not found unless ingested externally.

5.12 Dr. Don Catlin testified that the analysis of Respondent's urine had a "large" positive reading of the prohibited substance. He testified that the result showed no sample contamination.

5.13 In *B. v. IJF*, CAS 98/214, the panel dealt with an athlete who had tested positive for an anabolic steroid. The athlete raised a number of defenses, including an argument that he had not taken any prohibited substances and that the presence of the substances "must have some other explanation other than voluntary doping." *Id.* at 318. The athlete did not dispute that the urine that produced the positive result was his. *Id.* The panel reviewed the IJF Regulations and the Medical Code and stated that those provisions establish the principle that the athlete is responsible for the presence of doping products in his body. Every athlete enjoys the presumption of innocence until such time as the presence of a banned substance in his body is established. It is a matter for the sports organization to prove that presence: it is not required to prove intentional doping on the part of the athlete. That intent, and his culpability, are presumed as soon as proof of the presence of the banned substance has been furnished. *Id.* The panel reiterated that the athlete then had to prove that he is innocent. *Id.* at 319.

5.14 Respondent is likewise responsible for the presence of the prohibited substance in his body. Respondent failed to meet his burden of proof to establish a defense that may have allowed for a reduction in sanctions. (See USADA Ex. 4, §§14, 16, and 17.)

5.15 USADA produced evidence supported by able argumentation that Respondent had not met the burden of proving that a reduction in the suspension period is warranted.

5.16 The case law clearly indicates that the proportionality doctrine has to date been applied in a sports specific and conduct specific manner taking into account the specific international federation rules and, in the case of United States athletes, the USADA Protocol.

6. Decision and Award

The panel decides as follows:

6.1 A doping violation occurred on the part of Respondent.

6.2 The minimum suspension for a first offender of two (2) years to take place effective from February 18, 2003 is imposed on Respondent pursuant to IJF 17.

6.3 All competitive results which occurred on or after that date are cancelled.

6.4 A two-year period of ineligibility beginning February 18, 2003, from access to the training facilities of the USOC Training Centers or other programs and activities of the USOC, including grants, awards or employment is imposed.

6.5 The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne by USADA.

6.6 The parties shall bear their own costs and attorneys fees.

Signed this 27 day of August, 2003.


Carolyn B. Witherspoon, Chair

Jose Axtmayer

Edward Lahey