

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF THE ARBITRATION
BETWEEN

UNITED STATES ANTI-DOPING AGENCY,

Claimant,

-vs-

NOSLEN RUIZ-GUTIERREZ,

Respondent.

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AAA Case No.: 01-22-0002-8912

HAYDEE ROSARIO, ESQ.
ARBITRATOR

Final Award

APPEARANCES

FOR the CLAIMANT

Jeff T. Cook, Esq.
Spencer Crowell, Esq.

FOR the RESPONDENT

Noslen Ruiz-Gutierrez, *Pro Se*

INTERPRETER for RESPONDENT

Marcela Salazar, Certified Independent Translator and Interpreter (Spanish-English)

Denver Translator.com

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I. INTRODUCTION

Pursuant to the American Arbitration Association’s (“AAA”) Commercial Arbitration Rules (“AAA Rules”) as modified by the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes, (“Arbitration Procedures”) as contained in the United States Olympic & Paralympic Committee National Anti-Doping Policy (“USOPC NADP”), the Protocol for Olympic and Paralympic Movement Testing (“USADA Protocol”), and the International Cycling Union Anti-Doping Rules (“UCI-ADR”), the World Anti-Doping Code (the “Code”), (collectively known as the “Applicable Rules”), an evidentiary hearing was held via video conference on November 28, 2022, before the duly appointed arbitrator, Haydeé Rosario, Esq. (“the Arbitrator” or “Arb. Rosario”), concerning the anti-doping rule violation charges filed by the United States Anti-Doping Agency (“USADA”) against Noslen Ruiz-Gutierrez (“Respondent”) by letter dated June 21, 2022.

I, **THE UNDERSIGNED ARBITRATOR**, having been duly appointed and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby FIND and AWARD as follows,

II. THE PARTIES

1. The United States Anti-Doping Agency (“USADA” or “Claimant”) is an independent, non-for-profit organization recognized by the United States Congress as the official anti-doping organization for all Olympic, Paralympic, Pan American and Parapan American sport in the United States. USADA has full authority to execute a comprehensive national anti-doping program, policies and procedures related to testing of athletes, results management, education and research.
2. Noslen Ruiz-Gutierrez (“Respondent”) is a forty-eight (48) year-old amateur cyclist who resides in Miami Florida. Respondent has competed in various races in the state of Florida, including the Tour of South Florida on February 5, 2022, wherein he admittedly signed a Doping Control form and agreed to comply with the Code anti-doping rules and to submit to arbitration of any dispute related to the anti-doping testing conducted in this case.
3. USADA was represented in this proceeding by Jeff T. Cook, Esq., USADA General Counsel and Spencer Crowell, USADA Olympic & Paralympic Counsel.

4. RESPONDENT appeared *Pro Se*. He represented himself throughout the entirety of this arbitration proceeding. Marcela Salazar, a court certified independent Spanish-English interpreter and translator, served as Respondent's interpreter during the arbitration hearing.
5. USADA and RESPONDENT will be referred to collectively as the "Parties" and individually as a "Party."

III. THE UNCONTESTED FACTS:

6. The Parties did not enter into a Stipulation of Uncontested Facts and Issues in this case.
7. Respondent does not contest that the USADA collected an in-competition Sample # 177179V from him on February 5, 2022, during the Tour of South Florida, which was sent to the WADA-accredited laboratory in Los Angeles, California (the "Laboratory") for analysis.
8. Respondent does not contest that the Laboratory reported his Sample # 177179V as an Adverse Analytical Finding ("AAF"), for the presence of prohibited substances, including but not limited to, dexamethasone, phentermine, 19-noretiocholanolone (N9-NE"), a metabolite of nandrolone, and found in his B Sample 19-norandrosterone ("19-NA"), a metabolite of nandrolone and as an AAF for testosterone metabolites and/or derivatives of exogenous origin, collectively defined as prohibited Anabolic Androgenic Steroid ("AAS").
9. Respondent does not contest that by letter dated April 6, 2022, USADA notified him it imposed a provisional suspension because he tested positive for dexamethasone, phentermine and other prohibited substances found in the samples that he provided on February 5, 2022, as defined by the Code.
10. Respondent does not contest that he failed to respond to USADA's discovery requests and that he failed to comply with the Arbitrator's Order to respond to USADA's discovery requests on or before September 28, 2022.

IV. ISSUE

11. Whether Respondent has committed the anti-doping rules violations ("ADRVs") because of the presence of the specified and non-specified prohibited substances found in Sample # 177179V, as described in the charge letter dated June 21, 2022 or whether he engaged

in the attempted use of the prohibited substances in Sample # 177179V pursuant to Article 2.1 and 2.2 of the World Anti-Doping Code (the “Code”); and whether Respondent met his burden of proof to establish that the ADRVs alleged in the charge letter dated June 21, 2022 was unintentional or to demonstrate no significant fault or negligence on his part.

12. USADA asked the Arbitrator for the following sanctions:

- a. A four (4) year period of ineligibility pursuant to Article 10.2 of the Code which shall start from the issuance of the Arbitrator’s decision in this case.
- b. To disqualify Respondent of any competitive results obtained on or subsequent to February 5, 2022, including forfeiture of any medals, points and prizes.
- c. For the Arbitrator not to credit Respondent for any time served under the provisional suspension which has been effect since April 6, 2022, because Respondent violated his provisional suspension when he competed in the Miami Prix Crits Series on or about May 1, 2022. USADA indicated Respondent never disputed the USADA’s claim that he competed in the Miami Prix Crits Series on May 1, 2022, when he was provisionally suspended by USADA.
- d. To prohibit Respondent’s participation in any capacity in a competition or activity authorized or organized by any Code Signatory or in competitions authorized or organized by any professional league or any international-or national-level event organization or any elite- or national level sport activity funded by a governmental agency during the period of his ineligibility which shall start from the issuance of the Arbitrator’s decision in this case.

V. JURISDICTION

13. Respondent did not contest that this arbitration is governed, procedurally and substantively, by the USADA Protocol as applicable to Respondent and to Sample #177179V, which was collected on February 5, 2022, at the Tour of South Florida.

14. Pursuant to the Applicable Arbitration Procedures, which are contained in the USADA Protocol, the Arbitrator has the power to rule on her own jurisdiction.

15. No party has objected to the jurisdiction of the Arbitrator or asserted an arbitrability of the claim.

16. Accordingly, the Arbitrator finds this matter is properly before this Arbitrator.

VI. APPLICABLE LAW

A. THE ATHLETE'S RESPONSIBILITY

17. Article 2.1.1 of the World Anti-Doping Code provides, in relevant parts, that:

It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance, or its Metabolites or Markers found to be present in the Samples. 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 under Article 2.1

18. Article 2.2.1 of the Code, which relates to the Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, provides, in pertinent part, that:

It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. 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.

19. Article 2.1.2 of the Code provides, in relevant part, that an ADRV is established by "[the] presence of a Prohibited Substance or its Metabolites or Markers...where the Athlete's B Sample is analyzed, and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance, or its Metabolites or Markers found in the Athlete's A Sample..."

20. In essence, the Code applies a strict liability standard that holds the Athlete responsible for every substance that enters their body regardless of fault or knowledgeable use.

B. BURDEN AND STANDARD OF PROOF

21. Article 3.1 of the Code provide, in relevant part, that: "The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred." Additionally, Article 3.1 of the Code indicates that:

The standard of proof shall be whether the Anti-Doping Organization established an anti-doping rule violation to the comfortable satisfaction of

the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than the mere balance of probability but less than proof beyond a reasonable doubt. *Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut the presumption or establish specific facts or circumstances, except as provide in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.* (Emphasis added)

C. SANCTIONS ON INDIVIDUALS

22. Article 10.1 of the Code provides, in pertinent part, that:

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in the Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

23. Article 10 of the Code provides the period of ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be four (4) years where: pursuant to Article 10.2.1.1 of the Code,

The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.”

24. Thus, the period of ineligibility for an ADRV pursuant to Articles 2.1, 2.2 or 2.6 is four (4) years unless the Athlete can prove it was not an intentional violation.

25. The period of ineligibility may be further reduced when the Athlete demonstrates no significant fault or negligence on his or her part, as provided in Article 10.6.1.3 of the Code.

26. Article 10.10 of the Code, the Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of Anti-Doping Rule Violation provision, states, in relevant part, that:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample

was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

27. Additionally, Article 10.14.3 of the Code provides that an Athlete who violates the prohibition against participation during a provisional suspension, as described in Article 10.14.1, “shall receive no credit for any period of Provisional Suspension served and the results of such participation shall be Disqualified.”

VII. PROCEDURAL HISTORY

28. On July 1, 2022, Respondent requested a hearing to contest the charges filed against him by USADA by letter dated June 21, 2022.
29. On July 7, 2022, USADA initiated the arbitration proceedings in this case when it notified the AAA of Respondent’s request for a hearing.
30. By letter dated July 10, 2022, AAA appointed the Arbitrator in this case.
31. On August 19, 2022, the Arbitrator held a preliminary hearing with the Parties, wherein Respondent agreed to respond to USADA’s discovery requests by September 16, 2022.
32. On August 25, 2022, the Arbitrator issued Scheduling Order No. 1, wherein the Arbitrator scheduled the dates for the submission of pre-hearing briefs, exhibits and designated witnesses and scheduled the hearing date for November 28, 2022. Scheduling Order No. 1 was transmitted to the Parties by the AAA case manager.
33. On September 21, 2022, USADA filed a Motion to Compel Respondent’s discovery responses, wherein USADA indicated Respondent failed to respond to its discovery requests by the scheduled deadline of September 16, 2022.
34. Thereafter, an emergency status conference was scheduled by the Arbitrator for September 26, 2022, to address USADA’s Motion to Compel Respondent’s discovery responses, and to provide Respondent with the opportunity to respond to USADA’s Motion. Respondent was notified of the emergency status conference by the AAA case manager. Respondent did not appear for the emergency status conference, nor did he submit a written response to address USADA’s Motion to Compel his discovery responses.

35. On September 27, 2022, the Arbitrator issued her Decision concerning USADA's Motion to Compel Respondent's discovery responses and ORDERED Respondent to respond to USADA's discovery requests no later than September 28, 2022. Additionally, the Arbitrator in her decision put Respondent on notice that failure to respond to USADA's discovery requests by on or before September 28, 2022, will result in an adverse inference being drawn against him by the Arbitrator.
36. On October 3, 2022, USADA submitted its pre-hearing brief, its witness designation and exhibits list to the Arbitrator and Respondent. AAA transmitted USADA's pre-hearing brief, USADA's witness designation identifying its witnesses and the exhibits list to Respondent and to the Arbitrator.
37. On October 3, 2022 ("the October 3rd Statement"), Respondent submitted a statement addressed "To Whom it may concern" wherein Respondent indicated that his USA Cycling license has been expired since 2019. With his October 3rd Statement, Respondent also provided a copy of what appears to be his expired cycling license. Nonetheless, Respondent's October 3rd Statement contains no further explanation about his defense and/or failed to address in any manner the results of Sample # 177179V collected from him on February 5, 2022, during the Tour of South Florida.
38. On November 14, 2022, USADA submitted its reply to Respondent's October 3rd Statement asserting any issue related to Respondent's expired USA Cycling license is irrelevant to the issues raised by the anti-doping charges against him.
39. On November 28, 2022, the Arbitrator held a full evidentiary hearing via video conference in which both USADA and Respondent were present and were given the opportunity to call witnesses and present evidence, examine and cross-examine witnesses and make arguments in support of their respective positions.
40. There was no court reporter as agreed upon by the Parties.
41. Without objection from Respondent, USADA called Respondent as its first witness during the presentation of its case. USADA also called Dr. Matthew Fedoruk, PhD, its Chief Science Officer. USADA did not call any other witness.
42. Respondent did not present any witness to testify on his behalf nor did he ask any questions to Dr. Fedoruk. Specifically, Respondent indicated that: [Respondent] didn't have anything else to add."

43. All witnesses were sworn or affirmed.
44. The Parties provided oral opening and closing statements, gave arguments, and were given the opportunity to raise any issues or argument in support of their respective positions.
45. The Parties chose not to submit post-hearing briefs.
46. The hearing lasted one (1) day.
47. At the conclusion of the hearing, the Arbitrator asked the Parties whether they had any additional evidence to offer or witnesses to be heard, as required by the Protocol. The Parties indicated that they did not.
48. The Arbitrator declared the hearing closed on November 28, 2022.

VIII. FACTUAL BACKGROUND

On the entire record produced, I find the following relevant facts:

49. Respondent admitted that he competed in the Tour of South Florida and admitted that he signed the Doping Control form on February 5, 2022, wherein he agreed to abide by the Code and the anti-doping rules that are at issue in this case. (C-2)
50. Respondent neither raised any issues, concerns nor did he dispute in any manner the findings of the WADA-accredited Laboratory related to Sample # 177179V collected from him during the Tour of South Florida, which indicates the presence of various specified and non-specified prohibited substances, as defined by the Code. (C-4)
51. Respondent did not explain, or attempted to explain, how the expiration of his cycling license relates to the anti-doping charges filed by USADA against him.
52. Respondent did not deny his participation in the Miami Prix Crits Series on or about May 1, 2022, as recorded in his Competition History (C-1), which was presented to him during his testimony. Rather, Respondent stated that he “did not recall” anything about his participation in the Miami Prix Crits Series on May 1, 2022, which took place during his provisional suspension. The Miami Prix Crits Series competition was held only six months before the hearing in this case.
53. Respondent admitted that as an athlete he is responsible for the intake of any substance.
54. When asked about the anti-doping rules at issue in this case, Respondent stated as follows:
“I’m not the one who has to think about those things [referring to the anti-doping rules].”

That is USADA’s problem, not mine.” He further explained that as a forty-eight (48) year old athlete, “I don’t care to compete, I do cycling for recreation-not for competition.”

55. At the conclusion of Respondent’s direct examination by USADA, Respondent indicated he had no further statement or “anything else” to add to his testimony.
56. Dr. Matthew Fedoruk, Ph.D. (“Dr. Fedoruk”), is employed by USADA as the Chief Science Officer for its Science and Research unit. Dr. Fedoruk is an expert in the field of sport anti-doping and sport drug testing. He has a Ph D. in Pathology and Laboratory Medicine and has over 15 years of experience in the sport anti-doping field. Specifically, Dr. Fedoruk is an expert on the substances prohibited by the Code. As part of his job responsibilities, Dr. Fedoruk provides scientific guidance and opinions to the Science and Research staff related to the detection of performance-enhancing drugs in sports. (C-12)
57. Dr. Fedoruk indicated that he reviewed the results provided by the Laboratory for the in-competition A and B samples #177179V collected from Respondent on February 5, 2022. (C-11) During his testimony, Dr. Fedoruk also adopted the Expert Report that he prepared related to Respondent’s Sample #177179V.
58. At the hearing, Dr. Fedoruk confirmed the Laboratory’s findings and maintained the Laboratory complied with the international standards required by the Code.
59. Dr. Fedoruk confirmed Sample # 177179V collected from Respondent contained the prohibited substances listed on the charges against Respondent filed by letter dated June 21, 2022. Specifically, he testified about the presence of dexamethasone, phentermine, 19-NE, a metabolite of nandrolone, 19-NA, a metabolite of nandrolone and the presence of other 19-non-steroid, and the presence of testosterone metabolites and/or derivatives of exogenous origin, which are contained in the Laboratory results.
60. Dr. Fedoruk also indicated an Isotope-Ratio Mass Spectrometry (“IRMS”) was performed to determine if the prohibited substances found in Respondent’s Sample # 177179V, including the phentermine, testosterone, nandrolone, were produced by his body or are synthetic substances. Dr. Fedoruk described the IRMS test as the “gold standard” in sport anti-doping testing. He further indicated that the IRMS test showed the synthetic administration of the prohibited substances found in the samples collected from Respondent on February 5, 2022.

61. Dr. Fedoruk also explained that nandrolone, a prohibited substance, is a “powerful” steroid used to build muscle and strength and to improve performance because it helps the athlete to recuperate quickly. Similarly, the testosterone found in Respondent’s samples, Dr. Fedoruk noted, has the same potent effects as nandrolone. Dr. Fedoruk described the phentermine (“19-NE”) as “an amphetamine like” like substance that is a stimulant and reduces hunger and promotes weight loss. Regarding the dexamethasone found in the samples, Dr. Fedoruk described it as a prohibited substance which is a “complex drug” used to reduce fatigue or muscle pain.

IX. ANALYSIS AND FINDINGS

A. RESPONDENT COMMITTED THE ANTI-DOPING RULE VIOLATIONS ALLEGED IN THE CHARGE LETTER DATED JUNE 21, 2022.

62. The Arbitrator finds that USADA met its burden of proof to establish Respondent committed the anti-doping rule violations (“ADRV”) alleged in the charge letter dated June 21, 2022. The totality of the uncontroverted record, including the Adverse Analytical Findings (“AAF”) reported by the WADA-accredited Laboratory related to in-competition Sample # 177179V collected from Respondent on February 5, 2022 at the Tour of South Florida as well as the expert testimony provided by Dr. Fedoruk, is sufficient to establish Respondent violated all applicable anti-doping rules by his in-competition use of prohibited substances, which included, but was not limited to, dexamethasone, phentermine 19-NE, a metabolite of nandrolone, and 19-NA, a metabolite of nandrolone and AAF for testosterone metabolites. These are all prohibited substances listed on the WADA’s Prohibited List. Furthermore, Dr. Fedoruk’s testimony and his expert report shows the prohibited substances found in Respondent’s Sample # 177179V were not produced by Respondent’s body. Instead, Dr. Fedoruk explained, the nature of the prohibited substances, as shown by the IRMS test results, was synthetic. Accordingly, the Arbitrator finds USADA met its burden of proof to show Respondent committed the charged ADRVs.

B. RESPONDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE THE VIOLATION WAS NOT INTENTIONAL OR TO SUPPORT A FINDING THERE WAS NO SIGNIFICANT FAULT OR NEGLIGENCE ON HIS PART.

63. Respondent did not dispute the results of the WADA-accredited Laboratory related to the Sample # 177179V collected from him on February 5, 2022, nor did he offer any explanation for the presence of the prohibited substances in the samples collected from him. Most importantly, Respondent expressly disregarded the anti-doping rules by stating that: “I’m not the one who has to think about those things [referring to the anti-doping rules]. That is USADA’s problem not mine.” Lastly, an adverse inference was drawn by the Arbitrator based on his failure to respond to USADA’s discovery requests by the deadline set by the Arbitrator. For all the foregoing reasons, the Arbitrator finds Respondent failed to demonstrate the violation was not intentional or there was no significant fault or negligence on his part.

C. THE SANCTIONS FOR RESPONDENT PROVEN ANTI-DOPING RULE VIOLATIONS

64. Pursuant to Article 10.2.1.1 of the Code, the Arbitrator finds the period of ineligibility for proven ADRV by Respondent is four (4) years, which shall begin from the date of the issuance of the Arbitrator’s Award in this case. The Arbitrator considered this record is devoid of any evidence to demonstrate the proven ADRVs were not intentional or to demonstrate no significant fault or negligence by Respondent.

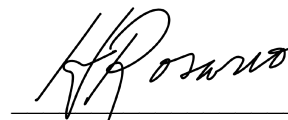
65. Pursuant to Article 9 and Article 10.10 of the Code, as requested by USADA, the Arbitrator finds Respondent’s results obtained on February 5, 2022, at the Tour of South Florida, when Sample # 177179V was collected from Respondent, and any results obtained subsequent to February 5, 2022, shall be disqualified with all the resulting consequences including forfeiture of any medals, points, and prizes. Accordingly, the Arbitrator directs the forfeiture of any medals, points, and prizes obtained by Respondent from February 5, 2022, through the ineligibility period shall continue in effect.

X. AWARD

Having duly heard the evidence and the argument of the Parties, the Arbitrator awards as follows:

- A. Respondent, Noslen Ruiz-Gutierrez, committed the anti-doping rule violations alleged in the charge letter dated June 21, 2022 pursuant to Article 2.1 and 2.2 of the Code.
- B. Respondent failed to meet his burden to demonstrate the proven ADRVs were not intentional or to demonstrate that he was not significantly at fault or negligent. Therefore, there is no basis on this record to reduce the required period of ineligibility of four (4) years.
- C. In view of Respondent's violation of his provisional suspension which was imposed on April 6, 2022, the start-date for the period of ineligibility is December 22, 2022, the date when this Award is issued by the Arbitrator, and it shall expire on December 22, 2026.
- D. The forfeiture of any competitive results obtained by Respondent on February 5, 2022, the date Respondent's Sample # 177179V was collected at the Tour of South Florida competition, including any award of medals, points, and prizes, and the forfeiture of any competitive results, medals, points, and prizes obtained by Respondent during his provisional suspension and throughout his period of ineligibility.
- E. This Award shall be the full and final resolution of all claims and counterclaims submitted in this Arbitration. All claims not expressly granted herein are denied.

Dated: December 22, 2022
Bronx, New York




Haydeé Rosario, Esq.

XI. AFFIRMATION

I, Haydee Rosario, Esq., being admitted to practice in the courts of New York, understand the penalties for perjury, and I affirm that this document is my Award, and the signature affixed below is mine.

Dated: December 22, 2022
Bronx, New York



Haydeé Rosario, Esq.