AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 77 190 E 00043 12 JENF
United States Anti-Doping Agency
and
Luis Arias

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated by the above-named parties, having duly heard the proofs and allegations of the parties, and having issued an Interim Final Award after a hearing held on February 23, 2012, in Colorado Springs, Colorado, does hereby issue this Final Award, as follows:

I. INTRODUCTION

1.1 USADA is the independent anti-doping agency for Olympic Movement sports in the United States and is responsible for conducting drug testing, including sample collection, and the adjudication of test results and potential anti-doping rule violations pursuant to the USADA Protocol for Olympic Movement Testing ("USADA Protocol").

1.2 Respondent, a 21-year-old USA Boxing registered middleweight division boxer, was first included in the USADA Registered Testing Pool ("USADA RTP") on January 1, 2009 and continuously since July 1, 2010.

1.3 In accordance with the requirements of the USADA's Whereabouts Policy ("Policy"), effective January 1, 2011, athletes in the USADA RTP, including Arias, are obligated to provide accurate and timely whereabouts information to facilitate and enable out-of-

competition athlete testing. Failure to do so on three occasions within an eighteen-month period results in an anti-doping rule violation under the Policy.

1.4 USADA declared that Arias failed on three separate occasions within the period from June 2011 and January 2012 to provide the requisite whereabouts information and charged Arias with a first anti-doping rule violation.

1.5 While Arias conceded the first two whereabouts failures, he contested the third failure, determined by USADA to have resulted from Respondent's failure to make his first quarter of 2012 whereabouts filing by December 31, 2011.

1.6 Because Arias intended to compete in a protected competition scheduled to commence on February 25, 2012, an expedited hearing pursuant to the USADA Protocol was agreed by the parties to be heard and decided by a sole arbitrator.

1.7 An evidentiary hearing took place in Colorado Springs, Colorado, on February 23, 2012, during which the parties provided testimony, several written exhibits, and oral argument in addition to pre-hearing briefing. Claimant was represented by William Bock, III and Onye Ikuwaukor, respectively USADA's General Counsel and Legal Affairs Director. Respondent was represented by Penny Feustel and Joseph Weigel, lawyers from Milwaukee, Wisconsin.

1.8 The parties agreed that in view of the imminent competition the Arbitrator would issue an Interim Award on February 24, 2012, to be followed by a full, reasoned award.

1.9 The Arbitrator issued an Interim Final Award on February 24, 2012, concluding that USADA had met its burden of proving that Arias had violated the Policy by his negligent commission of three whereabouts failures within an eighteen month period.

II. FACTS AND ISSUE

2.1 The salient facts are largely undisputed, namely that Arias was included in the USADA RTP and subject to compliance with the Policy. Moreover, Arias admitted his first two whereabouts failures declared by USADA.

2.2 As to the third whereabouts filing, Respondent admitted that he made the filing only on January 4, 2012, after the December 31, 2011, deadline.

2.3 The sole issue is whether Respondent was negligent, as Claimant contends and Respondent denies, in failing to make his first quarter 2012 filing notwithstanding his admitted failure to meet the December 31, 2011 filing deadline.

2.4 Respondent claims he unsuccessfully attempted to log on to the USADA website and tried to contact USADA in order to make his filing prior to the deadline.

2.5 Claimant's Doping Control Manager, Molly Tomlonovic, provided the critical testimony concerning the circumstances surrounding Respondent's alleged attempts to make his third filing, which proved unsuccessful.

2.6 Ms. Tomlonovic testified credibly regarding USADA's efforts and communications with athletes to assure their knowledge of the need for compliance with obligations under the Whereabouts Policy and their inclusion in the testing pool. She testified that Arias was in the USADA RTP and, as such, had completed the requisite interactive online educational program prior to completion of the first whereabouts filing.

2.7 As to communications by and with Claimant during the third filing period at issue, Ms. Tomlonovic testified that four emails were sent to Respondent, at the address provided by him, on November 15, December 8, December 15, and December 27, 2011. Those emails identified for Arias the importance of making timely whereabouts filings, instructed him as to how to obtain further information about the filings and advised him

of the consequences of a failure to make the filing. She further testified that USADA, three days prior to the December 31, 2011, filing deadline, telephoned Arias on the phone number he provided and left him a voicemail message reminding him to make his whereabouts filing before the deadline.

2.8 Respondent's testimony confirmed his receipt of the several written communications with him to which Ms. Tomlonovic testified.

2.9 Arias stated he was in college and postponed making his whereabouts filing since he was busy preparing for his final exams, which were completed on or about December 20, 2011. He claimed that during the last two months of 2011 he was seriously considering foregoing his Olympic eligibility in favor of turning professional and in that connection was training and meeting with lawyers, advisors, and promoters.

2.10 Respondent testified that on or about December 20, 2011, with his college exams concluded, he decided to prepare for the Olympic trials, but he conceded that he waited until the last days of December to address his first quarter of 2012 filing. He testified that when he got around to addressing that filing, he tried to log in but failed to do so allegedly because of "a password problem," and he admittedly waited until the final two or three days of December to call USADA about his inability to log in.

2.11 Respondent further testified that when he finally called to request that USADA reset his password he heard a recorded message that USADA's offices were closed for the holidays until January 2, 2012 and that he did not thereafter try to contact USADA until after the deadline.

III. DISCUSSION AND DECISION

3.1 Article 2.4 of the World Anti-Doping Code ("Code") provides:

> "2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing*, including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the *International Standard* for *Testing*. Any combination of three missed tests and/or filing failures within an eighteen-month period as determined by *Anti-Doping Organizations* with jurisdiction over the *Athlete* shall constitute an anti-doping rule violation."

3.2 Accordingly, it is clear that athletes in the USADA RTP are required to comply with out-of-competition testing, including the whereabouts filing obligations set forth in the Policy.

3.3 The failure on the part of the athlete to complete the whereabouts filings on three occasions within an eighteen-month period will thus result in a sanction for an anti-doping rule violation. See Policy, § 4; Code, Art. 2.4.

3.4 Article 11.3 of the World Anti-Doping Code International Standard for Testing ("IST") contains in detail the "Whereabouts Filing Requirements." See IST, § 11.3, pp. 48-53.

3.5 By reason of being in the USADA RTP, to which he admitted, Arias was required under Article 1.1.3 of the IST to submit a Quarterly Whereabouts Filing with USADA that "provides accurate and complete information about [his] whereabouts during the forthcoming quarter ... so that he can be located for Testing at any time during that quarter."

3.6 USADA may declare an athlete to have committed a filing failure only when it can establish:

"a. that the Athlete was duly notified (i) that he/she was designated for inclusion in a Registered Testing Pool, (ii) of the consequent requirement to maw Whereabouts Filings; and (iii) of the consequences of any failure to comply with that requirement;

b. that the Athlete failed to comply with that requirement by the applicable deadline;

c. (In the case of a second or third Filing Failure in the same quarter) that he/she was given notice of the previous Filing Failure in accordance with Clause 11.6.2(a) and failed to rectify that Filing Failure by the deadline specified in that notice; and

d. that the Athlete's failure to comply was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that he/she was notified of the requirement yet failed to comply with it. That presumption may only be rebutted by the Athlete establishing that no negligent behavior on his/her part causes or contributed to the failure."

IST, Article 11.3.5.

3.7 The Code provides that violations of Article 2.4 mandate that "the period of ineligibility shall be at a minimum one (1) year and at a maximum two (2) years based on the Athlete's degree of fault." Code, Art. 10.3.3.

3.8 Since, as noted in 3.6 above, under IST, Art.11.3.5(d) Arias is presumed to have committed a whereabouts failure "negligently" where it can be established by USADA that it notified him of the filing requirement, as Arias admitted it did, and Arias failed to comply, it remained for Respondent under the applicable rules, in order to preclude or limit a sanction, to prove that he was not negligent by his failure to comply with the whereabouts filing obligation. The standard of proof for Respondent to rebut the presumption of negligence shall be "by a balance of probability." See Code, Art. 3.1.

3.9 Since Respondent stipulated that he was not contesting the first two filling failures, it is necessary to examine Respondent's conduct in December to ascertain whether that conduct was such as to rebut the presumption of negligence.

3.10 After the expiration of the third filing period, Arias emailed USADA as follows:

> "In December I received some reminders that I tried to log on and update my forms in late December. Being that I have not done it in awhile, I had troubles logging on at first. I did everything in my power to log on but was unsuccessful. I then tried to call USADA, but I miss the office hours due to holidays. As soon as I was able to contact somebody and finally log on to update my forms, the deadline had already passed. I truly apologize but I missed timed your holiday office hours and was not able to log on."
>
> January 25, 2012, email from Luis Arias to USADA. Cl. Exh. 7(G).

3.11 Respondent's testimony to the effect that he tried to call Claimant's office but that it was closed in the week between Christmas and New Year's was rebutted by credible evidence that in fact USADA's office was open on December 27 through December 29, 2011, during regular business hours.[1] Moreover, the testimony revealed that USADA called Respondent during that week to remind him of the urgent need for him to submit his whereabouts filing before the year end.

3.12 Ms. Tomlonovic testified that, based on examination of USADA's records (Cl. Exh. 9) which were admitted in evidence, there was no record of a phone call made by Respondent to USADA during that time period, nor was there an attempt by him during that period to log on to his whereabouts account.(See Cl. Exh. 14).

3.13 Absent from the testimony presented by Respondent was any evidence as to why he could not have completed his whereabouts filing at almost any time during the months of November and December 2011. His admitted focus during that timeframe was on his studies and meetings with lawyers and advisors exploring his future direction and plans as an athlete. That, of course, was his choice, but it cannot be found either to excuse him

---

[1] Indeed, USADA's December 27, 2011 e-mail to Respondent sent at 10:23 am warned him not to wait any longer to file given the December 31 deadline, gave him two telephone numbers to call and an email address and reminded him to "be aware that the USADA offices are closed on Friday, December 30 and Monday, January 2nd." See Cl. Exh. 7(D).

from his whereabouts filing obligation, nor obviate his negligence in not meeting it. To accept such excuses would be not only to favor him over his competitors but to open the door for other athletes to avoid their filing obligations.

3.14 By waiting to almost the end of the filing period to attempt to contact USADA, even assuming that he had difficulty logging in and required a new password to do so, Respondent assumed the risk of a filing violation by choosing to focus on other matters. Having made several whereabouts filings previously and having received online training through an interactive education program and regular communications on how to make filings on a timely basis and having been repeatedly warned of the consequences of a failure to do, he could not credibly take the position that he was unable to contact USADA for assistance.[2]

3.15 I conclude, therefore, based on legally sufficient evidence adduced at the hearing, that Respondent's claim that his failure to make his third whereabouts filing was not due to his own negligence must be and is hereby denied. To the contrary, the evidence demonstrated that his failure to timely provide his whereabouts information by the end of December 2011, was negligent.

3.16 USADA established its compliance with the provisions of Article 11.3.5 of the IST, supra at 3.6, by declaring a filing failure on the part of Respondent.

---

[2] The arguments by Respondent's counsel that Respondent's conduct was reasonable under the circumstances given that he was an elite athlete who had been in the program for many years, had never tested positive and made attempts to make his third filing are unavailing. The record demonstrates not only that USADA made repeated and concerted efforts to convince Arias to make this third filing but that Arias, in his January 24, 2012 letter of apology to USADA, admitted as much. See Cl. Exh. 7(G). In light of Respondent's having conceded that he missed his first two filings and that he was fully aware of the filing process and chose to pursue other initiatives as the filing deadline approached, obviates his counsel's argument that missing the deadline by a few days should be disregarded as "de minimis."

3.17 Article 10.3.3 of the Code provides that there be a sanction ranging from a minimum ineligibility of one year to a maximum of two years for a violation of an anti-doping rule under Article 2.4 of the Code, the exact length of time being based on the Athlete's degree of fault.

IV. CONCLUSION AND SANCTION

4.1 Claimant sought a one-year period of ineligibility for Respondent's whereabouts violation, a first anti-doping rules' violation on his part.

4.2 The Interim Final Award is hereby confirmed, and Respondent is hereby sanctioned for a one-year period of ineligibility commencing as of February 24, 2012, the date of the Interim Final Award and ending at midnight on February 23, 2013.

4.3 Consequently, all competitive results, medals, points and prizes obtained by Respondent on or subsequent to January 1, 2012, his third whereabouts failure, are hereby cancelled with retroactive effect.

4.4 The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrator shall be borne by Claimant.

4.5 The parties shall bear their own costs and attorneys' fees.

4.6 This Final Award is in full settlement of all claims asserted in this arbitration. All claims not expressly granted herein are hereby, denied.

Dated: March 27, 2012

Walter G. Gans

Walter G. Gans, Arbitrator