



Arbitration CAS 2016/A/4658 Fédération Internationale de Volleyball (FIVB) v. Confederação Brasileira de Voleibol (CBV) & Maria Elisa Mendes Ticon Antonelli, consent award of 8 February 2017

Panel: Prof. Martin Schimke (Germany), President; The Hon. Michael Beloff QC (United Kingdom); Mr Jeffrey Benz (USA)

Beach volleyball

Doping (hydrochlorothiazide (HCT))

Consent award

Upon request by the parties, the arbitration tribunal ratifies and incorporates the terms of the settlement agreement into a consent award. It is the task of the arbitration tribunal to verify the *bona fide* nature of the settlement agreement, to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the settlement agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

I. PARTIES

1. The Fédération Internationale de Volleyball (hereinafter referred to as the “FIVB” or the “Appellant”) is the international volleyball federation, with its registered office in Lausanne, Switzerland.
2. The Confederação Brasileira de Voleibol (hereinafter referred to as the “CBV” or the “First Respondent”) is the Brazilian volleyball federation, with its registered office in Rio de Janeiro, Brazil, and which is affiliated with the FIVB.
3. Ms Maria Elisa Mendes Ticon Antonelli (hereinafter referred to as the “Athlete” or the “Second Respondent”) is a professional beach volleyball player. She was born on 25 February 1984 and has Brazilian nationality.

II. JURISDICTION

4. The jurisdiction of the Court of Arbitration for Sport (“CAS”) over this matter is not disputed. According to Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), as well as Article 13.2 of the FIVB Medical and Anti-Doping Regulations, the CAS has jurisdiction to decide the present dispute between the Parties.

III. FACTUAL AND PROCEDURAL BACKGROUND

5. On 10 March 2016, the Athlete was subjected to an out-of-competition doping test by the Brazilian Anti-Doping Authority.
6. On 11 April 2016, the Brazilian Anti-Doping Authority was informed by a WADA-accredited laboratory in Rio de Janeiro that the Athlete's A Sample had tested positive for the specified substance 'hydrochlorothiazide', categorised under section S.5 Diuretics and Masking Agents of the WADA Prohibited List.
7. On 22 April 2016, the Brazilian Anti-Doping Authority was informed that the Athlete's B Sample confirmed the adverse analytical finding of the Athlete's A Sample.
8. On 26 April 2016, the Superior Tribunal de Justiça Desportiva do Voleibol (the 'STJDV') issued a provisional suspension of the Athlete for a period of 30 days.
9. On 24 May 2016, the STJDV issued a final decision pursuant to which the Athlete was absolved of breaching Article 2.1 of the WADA Code and was suspended for 45 days for breaching Article 10.5 of the WADA Code, whereby the suspension was deemed to have started on 14 April 2016, the day of the Athlete's voluntary provisional suspension.
10. On 16 June 2016, the FIVB filed a Statement of Appeal with the CAS Court Office in accordance with Article R48 of the CAS Code.
11. On 9 August 2016, the FIVB filed its Appeal Brief with the CAS Court Office in accordance with Article R51 of the CAS Code.
12. On 22 August 2016, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the appointment of the Panel in this procedure as follows:

President:	Prof. Dr. Martin Schimke, Attorney-at-law in Düsseldorf, Germany
Arbitrators:	The Hon. Michael J. Beloff M.A. Q.C., Barrister in London, UK
	Mr. Jeffrey G. Benz, Attorney-at-law in Los Angeles, USA.
13. On 1 November 2016, the Athlete filed her Answer with the CAS Court Office in accordance with Article R55 of the CAS Code.
14. On 28 November 2016, the CAS Court Office informed the Parties that a hearing would take place on 12 December 2016 at the CAS headquarters in Lausanne.
15. On 5 December 2016, the Parties informed the Panel that a hearing would no longer be necessary as a settlement agreement had been reached by the Parties, following which the hearing was cancelled.

IV. SETTLEMENT AGREEMENT

16. On 5 December 2016, also, the FIVB, the CBV and the Athlete signed a settlement agreement (the “Settlement Agreement”) set out below:

Settlement Agreement

between, on the one part,

Fédération Internationale de Volleyball (“FIVB”)

and, on the other part,

Ms Maria Elisa Mendes Ticon Antonelli

and

Confederação Brasileira de Voleibol (“CBV”)

WHEREAS, the prohibited substance of Hydrochlorothiazide (“S.5, Diuretics and Masking Agents”) was found in Ms Antonelli’s sample taken during an out-of-competition test on 10 March 2016;

WHEREAS, by decision of 24 May 2016, the Superior Tribunal de Justiça Desportiva do Voleibol acquitted Ms Antonelli of a violation of Art. 2.1 of the World Anti-Doping Code (“WADC”);

WHEREAS, on 16 June 2016, the FIVB filed an appeal before the Court of Arbitration for Sport (“CAS”) against the foregoing decision;

WHEREAS, after the filing of Ms Antonelli’s Answer brief on 26 October 2016, Ms Antonelli’s counsel approached the FIVB for settlement discussion;

NOW, THEREFORE, the Parties hereto acknowledge and agree as follows:

1. Ms Antonelli has committed an anti-doping rule violation within the meaning of Art. 2.1 of the FIVB Medical and Anti-Doping Regulations (“FIVB MADR”), which have been drafted in accordance with the WADC.

2. In her Answer before the CAS, Ms Antonelli has submitted sufficient evidence for the FIVB to be satisfied that the adverse analytical finding was caused by contamination, which took place in the compounding pharmacy that produced the supplement taken by Ms Antonelli as prescribed by her doctor.

3. Taking into account Ms Antonelli’s degree of fault, a ninety (90) day period of ineligibility is imposed on her pursuant to Article 10.5.1.2 of the FIVB MADR.

4. Ms Antonelli shall be credited with a served voluntary provisional suspension starting on 14 April 2016 until 27 April 2016, and a served mandatory suspension ordered by the Superior Tribunal de Justiça Desportiva do Voleibol from 27 April 2016 until 24 May 2016, i.e. a total of forty (40) days.

5. Ms Antonelli shall serve the remaining fifty (50) day period of eligibility from the date of this Settlement Agreement, 5 December 2016 until 24 January 2017.

6. The FIVB shall be entitled to communicate the present settlement to the WADA and CAS as well as to the interested National Federation(s) and Confederation(s), and to publish the anti-doping rule violation and the resulting sanction in accordance with the FIVB MADR.

7. The CAS shall issue a consent award based on this Settlement Agreement. The costs of the arbitration, if any, will be born equally by the parties. Each party shall bear its own legal fees and expenses.

5 December 2016, Lausanne, Switzerland 5 December 2016, Rio de Janeiro, Brazil

FIVB

ATHLETE

Dr. ARY GRACA

MARIA ANTONELLI

5 December 2016, Rio de Janeiro, Brazil

CVB

RICARDO TRADE

V. ENDORSEMENT OF THE SETTLEMENT AGREEMENT

17. The Parties have requested that the Panel ratify and incorporate the Settlement Agreement into a Consent Award. It is the task of the Panel to verify the *bona fide* nature of the Settlement Agreement, to ensure that the will of the Parties has not been manipulated, and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute (see CAS 2013/A/3395 para. 49).
18. After reviewing the terms of the Settlement Agreement, the Panel finds no grounds to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the present dispute. It therefore, in accordance with the Parties' request, ratifies the Settlement Agreement and incorporates it into a Consent Award.
19. Accordingly, the present Award puts an end to the arbitration procedure with reference CAS 2016/A/4658 Fédération Internationale de Volleyball v. Confederação Brasileira de Voleibol and Ms Maria Elisa Mendes Ticon Antonelli.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Settlement Agreement between the Fédération Internationale de Volleyball, the Confederação Brasileira de Voleibol and Ms Maria Elisa Mendes Ticon Antonelli dated 5 December 2016 is hereby acknowledged and its terms are incorporated into this arbitral Award.
2. The arbitration procedure with reference CAS 2016/A/4658 is hereby terminated.
- (...)
5. All other or further claims are dismissed.