IN THE MATTER OF CHARGES BROUGHT BY THE PROFESSIONAL TENNIS INTEGRITY OFFICERS ("PTIOs")

UNDER THE TENNIS ANTI-CORRUPTION PROGRAM 2017 and 2020 ("the TACP")

BEFORE ANTI-CORRUPTION HEARING OFFICER (the "AHO"), IAN MILL QC

CORRUPTION NOTICE TO: Barbora Palcatova ("the Player")

The PTIOs being constituted by appointments from each of the following Governing Bodies:

WTA Tour, Inc

Grand Slam Board

International Tennis Federation ("ITF")

ATP Tour, Inc

Representing the PTIOs: Ross Brown of Onside Law Solicitors, London, England

Unless otherwise clear from the context, capitalised terms in this Decision bear the respective meanings given to them in the TACP.

DECISION ON SANCTION AND ORDER

DECISION

Introduction

1. I have been appointed the AHO in this case, which was commenced by a Notice of Charge dated 17 August 2020.

2. By that Notice, the Player was charged with two offences under the 2017 TACP. Specifically, the offences alleged were as follows:

a. That, contrary to Section D.1.d, the Player had contrived the outcome of a doubles match in which she played with a [redacted] tennis player, [redacted] ("[redacted] against [redacted] and [redacted] in the ITF Women's Circuit tournament in [redacted] on the island of [redacted] on [redacted] April 2017 (the "**Match**"), having agreed beforehand with a [redacted] tennis coach and former tennis professional, [redacted] ("[redacted] to lose a set of that match [redacted] in return for payment.

b. In the alternative (i.e. on the basis that the PTIOs failed to prove the offence alleged above), that, contrary to Section D.2.a.i, the Player had failed to report to the TIU the corrupt approach from [redacted] described above.

3. By her written response to the Notice of Charge dated 28 September 2020, the Player admitted the commission of the Section D.1.d offence (in accordance with admissions previously made by her when interviewed by the TIU on 9 July 2020). Accordingly, this Decision does not further consider the alternative offence referred to in paragraph 2b above.

4. On the basis of the Player's admission, the PTIOs provided me with written submissions on sanction on 23 October 2020 in relation to the Section D.1.d offence, to which the Player responded in writing on 16 November 2020.

5. My consideration of these two sets of submissions led me to the conclusion that there was a material allegation of fact made by the PTIOs in support of their suggested level of sanction which was not accepted by the Player. Thus, the PTIOs submitted that:

a. the Player had been sophisticated enough during the Match to make a double fault at an appropriate moment (paragraph 15);

b. she had been calculated enough during the Match to "complete the fix" (paragraph 19).

For her part, in contrast, the Player's position was that "during the match I did not act in such a way that my agreement with [redacted] was fulfilled. My mistakes in the match were not intentional". She attributed "the failure to the stress caused by [redacted] and also to our

opponents who were classified on significantly better positions". This was broadly consistent with assertions which had been made by her in her first response to the Notice of Charge.

6. In consequence, I sought clarification from the PTIOs as to whether they wished to maintain their version of events as set out in paragraph 5 above, or whether they were content that I should approach the question of sanction based on the Player's version of events relating to the Match. I made it clear that, if the PTIOs were not so content, I would need to make directions with a view to resolving this issue.

7. By their written Supplemental Submissions dated 18 January 2021, the PTIOs clarified that their position remained that the Player "did actually contrive the outcome of the Match" (paragraph 2) and that she "knowingly fixed the Match" (paragraph 10). The PTIOs were unable to accept, given the admitted fixing arrangement in place, that the Player "just played normally" (paragraph 7). In her response of 29 January 2021, the Player maintained that she "didn't act with intent to lose the match during the match".

8. In those circumstances, it seemed to me that I needed to resolve this factual conflict and that a hearing was required for that purpose.

9. That hearing took place remotely on 17 March 2021. The Player attended without representation and gave evidence orally. The PTIOs were represented by Mr Ross Brown of Onside Law. I am grateful to both of them for their assistance.

Common Ground

10. At least by the end of the hearing, the following material facts relating to the admitted offence appeared to be common ground (in the sense that the PTIOs did not positively dispute the Player's account in these respects):

    a. The Player, who was 19 years old at the time, made an agreement with [redacted] on the day of the Match, to lose the [redacted] set of the Match [redacted]

    b. In return, [redacted] agreed to pay the Player the sum of €800.

c. The Player and her playing partner, [redacted] did in fact lose the [redacted] set of the Match [redacted] They lost the [redacted] set by the same margin. The Player's opponents in the Match were ranked doubles players who would have been expected to win the Match. The Player's playing partner played very poorly, on this occasion at any rate.

d. The Player took delivery of the agreed amount in cash on about 25 April 2017. It was given to her by an intermediary, another tennis player called [redacted] [redacted]

11. It is also the case that the PTIOs do not dispute the Player's assertion that this was her only case of involvement in match fixing. They have also acknowledged that:

a. the Player made admissions about her conduct at the first available opportunity when confronted by the TIU. It is not suggested by the PTIOs that the Player tried to conceal her actions or mislead the TIU in any way[1];

b. the Player's apology and expressions of remorse for her conduct should be accepted as genuine;

c. the Player's age and inexperience meant that she did not appreciate the full consequences of her actions at the time.

The factual issue

12. As first formulated, the PTIOs' case on the issue which was the subject of the hearing included the proposition that there was evidence in the Player's play in the Match that she had, during the Match, intended to carry out the agreed fix. Specifically, it was submitted that she had deliberately double faulted at a strategically important moment. This suggestion was also put to the Player in her interview with the TIU. The Player was adamant in her responses that this was untrue – everyone double faults from time to time.

13. This allegation was not put to the Player at the hearing, nor was it advanced in argument at the end of the hearing. I propose to treat that allegation as withdrawn, therefore – and to

[1] See paragraph 17 of the PTIOs' original submissions on sanction. However, a more qualified approach by the PTIOs was evident by the end of the hearing. I address this later in this Decision (see paragraph 17 below).

proceed on the basis that there was and is no evidence based on the events of the Match itself (other than the [redacted] set score) that the Player failed to give of her best throughout, as she asserts was and is the case.

14. The PTIOs' case instead became an exclusively inferential one. Given that the Player had agreed to the fix on the day of the match and had sought and accepted payment thereafter, it was and is to be inferred that the Player had intended during the Match (subject to the limitations necessarily imposed by the fact that she could not control the performances of [redacted] and of her opponents) to bring about the result that was in fact achieved in the [redacted] set and which she had agreed to achieve. Why would she not have intended this, having just agreed to do it? Why would she have been willing to risk the displeasure of [redacted] by playing to the best of her ability, with the attendant possibility that the wrong result would eventuate? Why would she subsequently have sought and accepted payment, if she had in fact not performed her side of the bargain?

15. This was, in my view, a formidable case for the Player to have to meet. I listened to her evidence on these matters with great care. Having done so, my conclusions are as follows:

    a. I am able to accept her version of events to an extent only.

    b. Specifically, I am prepared to accept that the gulf in quality between the two pairings was such that the Player did not, as the [redacted] set progressed, consider that she had to lose points deliberately in order for the required outcome in the [redacted] set to be achieved. This conclusion is supported by the fact that the score in the [redacted] set (in respect of which no agreement to fix had been made) was the same.

    c. What I am not prepared to accept, however, is the Player's evidence that she would have carried on trying her best even if that would have meant winning a game. She accepted that such an outcome would have put herself "in danger" and that to act in such a way made no sense. Her explanation was that she was "young and dumb".[2] The Player was certainly young at the time, but she did not strike me as the sort of person one who would so stupidly have endangered herself. Nor did she strike me as someone who would have proceeded to seek and accept payment, if she had knowingly reneged on her side of the bargain during the Match. I did not find her

[2] See transcript pages 15-17.

explanation for taking the money, that she wanted to be able to avoid (on this occasion) having to rely upon her parents ("to be adult"), at all convincing[3].

d. I noted, during her evidence in response to questions from me, that she was clear both as to the set which she had agreed to lose [redacted] and as to the amount that she was to be paid and was in fact paid. In her interview with the TIU in July 2020 she was unclear on both these matters. In my judgment, it is improbable that she would have remembered such matters in the intervening period. I have concluded that she knew such matters at the time of the interview but declined to provide those details. That may have been due to nervousness on her part but I am inclined to prefer the conclusion that this was an exercise of judgment by her at the time as to what she should and should not admit at that point in time. This conclusion accords with my impression of the Player as an intelligent person – certainly not the "dumb" one she proclaimed herself to be.

e. The Player described to me her thoughts about the Match, and why she was trying her best during it, at page 11 of the hearing transcript:

> "I was trying my best because I knew it was good opportunity against, like, good players. I wouldn't have that much opportunity to play against these players because I know they will be good and they are...So, I think I enjoyed the match because they are [redacted] and I am Slovak, so we [redacted]".

The problem with this evidence is that these reasons were available to the Player before the Match commenced. Why then did she agree to fix the [redacted] set in the first place? Moreover, it was not her evidence that she had decided prior to the commencement of the Match to renege on her agreement. I am prepared to accept, however, that she might have come round to this way of thinking during the Match, once it had become apparent that the required result was going to be achieved however hard she tried. Certainly, this may well have been her approach during the [redacted] set.

16. In short, therefore, the Player did not decide to renege on her agreement during the Match. Doubtless, however, she was grateful to her opponents (and her playing partner) that she did

[3] See transcript page 31.

not have to conduct herself during the [redacted] set in a manner which was inconsistent with her trying her best to win points.

17. Before turning to consider sanction, I should refer to one additional aspect of the evidence given by the Player at the hearing. This related to the unavailability of messages on her mobile telephone which might have assisted the TIU in their investigations into [redacted] activities, in particular. The Player's explanation is that they had been lost when she changed her handset. The PTIOS challenged that explanation, pointing out that by keeping the same SIM card those messages should have been retained. The suggestion was that the Player had deleted those messages deliberately. She denied this. As I made clear to Mr Brown at the time, in the absence of expert evidence on the point, I was not (and am not) prepared to find against the Player on this point.

Decision on Sanction

18. I have set above most of the salient aspects of the Player and her offence, so as to enable me to determine the appropriate sanctions to impose on her. However, the following additional matters are in my view also relevant:

    a. The Player has already been sanctioned by the Slovakian Special Prosecutors Office for the commission of a sports corruption crime, for which she was fined €1,500. I accept that this caused her mental distress, in particular as it involved disappointing her family who had to step in to pay the fine.

    b. The Player has no income with which to pay any financial penalty which I might seek to impose. She claims that her family would have to assist again and observes that the whole of her family should not have to be punished for her mistake. She also claims that the economic effects of the Covid-19 pandemic mean that her family do not have current financial means to assist.

    c. I accept as genuine the Player's expressions of (a) desire to be able to continue with a tennis career and (b) contrition for what she did back in 2017, accompanied by a determination not to commit any such wrongful acts again.

19. I do not understand the PTIOs to dissent from any of the above, nor to contest the Player's assertion that she did not understand the gravity of her actions until she was charged by the Slovakian authorities.

20. Against this factual background, I now come to decide on the question of sanction for the Player's offence.

21. The approach that I should adopt can be summarised succinctly:

    a. I should be careful to ensure that the sanction is proportionate to the offence and to the offender.

    b. It should also take into account previous relevant decisions, in order to ensure a measure of consistency, in the interests of justice and fairness.

    c. It should reflect the utmost seriousness of the nature of the offence committed. Match fixing strikes at the heart of the sport of tennis, such that (in appropriate cases) those guilty of involvement in such activities have received life bans.

22. The PTIOs have helpfully drawn my attention to a number of (more or less) relevant previous decisions, from which they have concluded that an appropriate sanction for the Player would be a ban of four years with one year suspended, together with a fine of US$5,000 of which US$3,500 should be suspended. The Player submits that a ban of 18 months would be sufficient – any longer period would probably mean the end of her tennis career. She is unable to afford any financial payment and, in effect, asks that I should impose none.

23. I agree with the PTIOs that the closest precedent on the question of a ban is that of the case brought against Henry Atseye (a decision of Professor Richard McLaren in July 2019). This too involved one instance of match fixing, committed by a player in 2017. In concluding that an appropriate period of ineligibility from participation was three years with one year suspended in the light of the mitigating factors which he found to be present, the AHO focussed upon the player's admission of the offence when interviewed by the TIU and in response to the Notice of Charge, his genuine contrition and his cooperation with the process. He also referred to the limited impact of the offence on the wider sport of tennis, given the isolated event involved and the player's lack of professional success.

24. I note that the player in that case was 28 years old at the relevant time and that the circumstances of his offence were aggravated by an additional non-reporting charge which referred to the player's willingness to maintain contact with a known corruptor. Finally, I note that the AHO's impression was that the player was "rather naïve in his conduct and duped by his fellow tennis player, a known corruptor".

25. Overall, it seems to me clear that the circumstances of the Player's offence are broadly commensurate with those I have just described. However, in my judgment, the Player's mitigation is somewhat stronger overall, given in particular her age at the time of her offence, her punishment at the hands of the Slovakian authorities and her lack of any further involvement with [redacted]

26. I should make it clear that, in my overall conclusion about the extent of the Player's mitigating factors, I have not ignored the fact that she gave evidence before me which I have felt unable to accept. Had I taken the view that she deliberately sought to deceive me in her evidence and/or had acted unreasonably in causing the hearing to take place, I would have taken this into account as an aggravating factor. However, that was not and is not my view. In my judgment, the Player has, over time, come to believe the truth of her account as given in evidence and therefore sought to assist, not mislead, at the hearing.

27. On what basis, then, do the PTIOs propose a longer ban than that imposed in the *Atseye* case? The answer, apparently, is an observation made by another AHO, Charles Hollander QC, in the case of *Kanar*, in January 2020, that "it would be a very exceptional case that attracted a ban of less than four years". That AHO had formed his personal view that some (unidentified) previous decisions had suggested to him "a trend which minimises the seriousness of match-fixing". I do not regard this observation as warranting any different conclusions on sanction on the particular facts of *Atseye* to that reached by the very experienced AHO appointed in that case. In any event, it is clearly possible that Mr Hollander regarded the facts of the *Atseye* case as "very exceptional".

28. In those circumstances, I have concluded that the Player should be subject to a period of three years' ineligibility, but with 15 months of that period suspended.

29. The Player should also be subject to a financial penalty, which I agree with the PTIOs should be US$5,000 with payment of US$3,500 of that sum suspended. I expect there to be pragmatic

discussions between the parties as to the terms upon which, and the period over which, payment of the balance of US$1,500 is to be made.

ORDER

Accordingly, I make the following Order:

1 The Player is subject to a Period of Ineligibility of 36 months, commencing upon the date of this Decision and Order, 15 months of which is suspended provided the Player acts in accordance with the TACP throughout the Ineligibility Period.

2 Payment by the Player of a fine of US$5,000, payment of US$3,500 is suspended provided the Player acts in accordance with the TACP throughout the Ineligibility Period referred to in 1 above.

This Decision is subject to appeal to the Court of Arbitration for Sport in accordance with Section I of the 2020 TACP.

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London, England

31 March 2021