

In the Matter of determination of Sanctions in admitted Corruption Offenses under the

TENNIS ANTI-CORRUPTION PROGRAM

Corruption Notice to Henry Atseye (hereinafter “the Player” or “Covered Person”)

- and -

Professional Tennis Integrity Officers (“PTIOs”)
Being constituted by appointments from each of the following
Governing Bodies:

ATP Tour, Inc.	(“ATP”)
Grand Slam Board	(“GSB”)
International Tennis Federation	(“ITF”)
WTA Tour, Inc.	(“WTA”)

Representing the Covered Person: Self-Represented

Representing the PTIOs: Ross Brown, Esq.
Jamie Ptaszynski, Esq.
Onside Law Limited
642 Kings Road, London, UK, SW6 2DU

Anti-Corruption Hearing Officer,
Tennis Anti-Corruption Program Professor Richard H. McLaren, O.C.
(hereafter “AHO”)

A W A R D of the AHO

PARTIES

1. The PTIOs¹ are appointed by each Governing Body (ATP, GSB, ITF, & WTA) who participates in the Tennis Anti-Corruption Program (“the TACP” or “the Program”). They have the responsibility to administer the TACP and direct the Tennis Integrity Unit (“TIU”).

2. Henry Atseye is a 30 year-old Nigerian tennis player. He has played mostly on the six-tour ITF circuit in Nigeria. At the time of the alleged Corruption Offenses he was registered with the ITF through the use of his ITF International Player Identification Number (“IPIN”) as indicated in his interview with the TIU on 16 April 2019. Through the use of his IPIN the Player agreed to comply with the rules of tennis including the Program. The AHO concludes that by virtue of the IPIN and the Player’s subsequent participation with the TIU and the AHO in this proceeding there is jurisdiction over the Player as a Covered Person under the 2017 and 2019 Programs.

3. Richard H. McLaren holds an appointment as an Anti-Corruption Hearing Officer under Section F.1. of the TACP. No Party made any objection to the jurisdiction of the AHO; nor, to his being an independent, impartial, neutral adjudicator to render a determination in this case.

¹ All capitalized words or acronyms take their defined meaning from this text or the Program Definitions.

PROCEDURAL BACKGROUND

- 4. The matters at issue in this proceeding took place during the calendar year of 2017. Therefore, the 2017 Rules of the TACP apply to the merits of this proceeding. The procedural aspects of this matter are governed by the 2019 TACP rules.

- 5. On 7 May 2019 the counsel for the PTIOs made an application for Provisional Suspension (“PS”) under Section F.3.a.ii. A PS was imposed by the AHO on 10 May 2019.

- 6. On 23 May 2019, counsel for the PTIOs served a Notice of Alleged Corruption Offenses under the TACP. The Notice of Charge (the “Notice”) alleged that:

Charge 1

“You are charged with one breach of Section D.1.d of the TACP 2017:

...
In particular, you are charged with contriving a match on 16 May 2017 in the ITF Futures F3 tournament in Abuja, Nigeria in which you partnered [REDACTED]

Charge 2

“You are charged with a breach of Section D.2.a.i of the TACP 2017:

...
During the Interview you admitted that [REDACTED] *approached you the day before the Match and proposed that you fix the match in exchange for money. You further admitted that you made no effort to*

[REDACTED]

report this approach to the tournament supervisor or anyone else before the Interview. The PTIOs consider that this admitted failure to report a corrupt approach promptly is a breach of the TACP.”

Charge 3

“You are charged with a second breach of section D.2.a.i of the TACP 2017.

Your exchange of messages with [REDACTED] reveals another potential plan to fix a match. On 1 June 2017 you texted [REDACTED] to say “Playing tournament in Lagos”, to which he responded “Text me one day before you play”. The PTIOs consider this constitutes another approach by [REDACTED] about fixing unspecified match(es) in the future. When the TIU put it to you in the Interview that “you’ve also given places that you are playing Tournaments at because you understood that it may be that you were wanting to fix further matches at those tournaments” you responded “yes but I did not”. The PTIOs submit that by this you meant that you were open to fixing further matches with [REDACTED] albeit that eventually you may not have done. By your own admission you knew that [REDACTED] was approaching you with the purpose of fixing another match and you failed to report this approach. The PTIOs consider this is a second failure to report a corrupt approach and therefore a second breach of section D.2.a.i of the TACP 2017.”

Charge 4

“You are charged with breaching Section D.2.a.ii of the TACP 2017:

As stated above, the PTIOs submit that the message sent by [REDACTED] in which he says “my partner knows /So its easy” is evidence that you knew or suspected at that point (i.e. before the Match) that [REDACTED] (a Covered Person) was in the process of committing a Corruption Offense, namely fixing or attempting to fix the Match. It is a matter of fact that you did not report that suspicion or knowledge at that time or at any time before the Interview.”

7. In an email to the AHO and counsel for the PTIOs on 23 May 2019 the Covered Person admitted to Charges 1 and 4 of the Notice and apologized

for his commission of those Corruption Offenses stating that he regretted his actions. He further suggested that he had failed to report as indicated in Charge 2 of the Notice and apologized for failing to do so. As to Charge 3 he provided an explanation that he was merely keeping in touch with his sometimes doubles partner [REDACTED] a Covered Person now banned for life.

8. The AHO responded by email to the Player's foregoing explanation of the Charges in the Notice. That correspondence outlined the various options that the Player had in pursuing the matter under the TACP 2019.
9. On 28 May 2019, the Player responded to the AHO indicating that he wished to proceed under the provisions of Section G.1.d.iii. of the 2019 TACP.
10. The AHO replied attempting to determine under which branch of Section G.1.d.iii. he wished to proceed. That Section provides for two possibilities upon admission: (i) request a hearing to dispute or seek to mitigate the sanction imposed; or, (ii) provide a written submission solely on the issue of sanction. The correspondence of the AHO indicated that he could treat the emails of 23 and 28 May 2019 as the Player's written submission and merely request the PTIO's submission on sanctions.
11. On 28 May 2019 the AHO requested counsel for the PTIOs to provide a written response to the Player's submissions on sanctions as provided for in Section G.1.d.iii. They did so on 6 June 2019.

12. On 5 June 2019 the Covered Person responded confirming that the AHO was to treat his email communications as the written submission and that “...I do not wish to add anything further to my submission...” He also advised that in the intervening days he had unfortunately [REDACTED] and that was why he had not communicated earlier.

BACKGROUND FACTS

13. At the time of receiving the submissions of the PTIOs, the Player had an ITF World singles ranking of 1916 and doubles ranking of 1386. His career high ranking in ATP singles was 1518. His total career prize money is \$6,188 (US). He has not played an Event as an individual outside of Nigeria where he resides since playing in a Rwanda F1 Futures event in October 2013. He was 28 years of age at the time of the admitted Corruption Offenses. He was an experienced tennis player having competed on the ITF Futures tour since 2005.
14. During the TIU interview conducted on 16 April 2019 the Player admitted to being approached by another player to contrive the outcome of a match the following day. He subsequently admitted to contriving the outcome of that match.
15. In the course of dealing with the AHO the Player has admitted to one breach of Section D.1.d. consisting of contriving the outcome of an ITF Futures F3 Tournament match on 16 May 2017 (“the Match”). He has also admitted to two breaches of Section D.2.a.i. in failing to report corrupt approaches. One of those failures was the approach by [REDACTED] on the day before the Match. He further admitted to a breach of Section D.2.a.ii. when he failed to

report his suspicions of corruption concerning his doubles partner in the Match which gave rise to the contriving breach of Section D.1.d.

16. The Player further admitted to all charges in an email to the AHO on 28 May 2019. Once confronted by the TIU and accused of committing Corruption Offenses he immediately co-operated with the investigators. The Player has admitted the breaches of the Program and co-operated fully in the investigation.

SUBMISSIONS of the PARTIES

The Player

17. The Player admits his commission of the Corruption Offenses and expresses remorse: *“I regret my action in contriving with my partner on the said match. Also I sincerely apologize for not reporting the incidence to the TIU...”*
18. The Player submits he was taken advantage of by the player who approached him to contrive the match: *“I was in a confused state ... and my partner was not very straight with me; he really played on my naivety being my first experience and I fell for it ... Once again I am really sorry and I regret this action.”*
19. Finally, the Player submits to the AHO that:
“...this has taught me a very big lesson that will last a lifetime and if given the opportunity, I will create more awareness of the danger of

match fixing within my country and anywhere I find myself around the globe.”

The PTIOs

20. The submission focuses on the number of Corruption Charges being 4 in total. The PTIOs emphasize the most serious of the breaches is the contriving of the Match on 16 May 2017. In examining this type of match-fixing CAS has taken a strong and vigorous approach as can be determined by a review of the root CAS case of *Oleg Oriekhov v. UEFA* (CAS 2010/A/2172).
21. It was submitted that the decisions of prior tennis cases while not being binding on the AHO do reveal a range of sanctions from three to five years of ineligibility with a portion suspended in some circumstances. There is one exception to that range wherein the sanction was two years with one year suspended. It was submitted the present case fits into the longer range. Reference was made to *Guillermo Olaso* (2013), *Arkadiusz Kocyla* (2015), *Nicholas Kicker* (2018), *Patricio Heras* (2018), *Christopher Diaz-Figueroa* (2018) and *Loveth Donatus* (2018).
22. There are three charges of failing to report and there is evidence that the Player was desirous of maintaining his relationship with ██████████ who has since been banned for life on corruption offenses. It is submitted that the sanction for a non-reporting offense used to be a maximum of three years under prior iterations of the TACP. The change in the rules illustrates the greater significance of this offense.

23. The PTIOs submit that when these Corruption Offenses are combined with the Corruption Offense relating to contriving a match the proportionate sanction in the present circumstances is to serve a ban from any Events organised or sanctioned by any Governing Body for a period of five years.
24. It was acknowledged that the Player has had less success as a professional tennis player than those referred to in the cases cited above. The Player's rank is much lower and he has had limited opportunity to play outside of Nigeria. Therefore, the financial means of the Player to pay any fine is limited and should not be as high as in the above referenced cases. It was submitted that a fine of \$5,000 (US) be imposed with half of it suspended on the condition that no further violation of the TACP occur.

THE RELEVANT PROVISIONS OF THE 2017 PROGRAM (applicable to the merits)

25. D. Offenses

Commission of any offense set forth in Section D or E of this Program including a violation of the Reporting Obligations or any other violation of the provisions of this Program shall constitute a Corruption Offense for all purposes of this Program.

1. Corruption Offenses.

...

- d.** *No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome of any other aspect of any Event.*

...

2. Reporting Obligation.

a. Players.

i. In the event any Player is approached by any person who offers or provides any type of money, benefit or Consideration to a Player to (i) influence the outcome or any other aspect of any Event, or (ii) provide Inside Information, it shall be the Player's obligation to report such incident to the TIU as soon as possible.

ii. In the event any Player knows or suspects that any other Covered Person or other individual has committed a Corruption Offense, it shall be the Player's obligation to report such knowledge or suspicion to the TIU as soon as possible.

...

c. For the avoidance of doubt, (i) a failure of the Reporting Obligation by any Covered Person; and/or (ii) ...shall constitute a Corruption Offense for all purposes of the Program.

H. Sanctions

1. *The penalty for any Corruption Offense shall be determined by the AHO in accordance with the procedures set forth in Section G, and may include:*

a. *With respect to any Player, (i) a fine of up to \$250,000 plus an amount equal to the value of any winnings or other amounts received by such Covered Person in connection with any Corruption Offense, (ii) ineligibility for participation in any event organized or sanctioned by any Governing Body for a period of up to three years, and (iii) with respect to any violation of Section D.1, clauses (d)—(j) and Section D.2, ineligibility for participation in any event organized or sanctioned by any Governing Body for a maximum period of permanent ineligibility.*

...

AHO DECISION

26. The Player co-operated with the TIU when he was interviewed in April of 2019. That co-operation included permitting the immediate download of his phone. He admitted in his interview that he had contrived the outcome of a match and had failed to report a corrupt approach by his doubles partner.

27. In the process of responding to the Notice he admitted the Corruption Offenses set out in the Notice and seeks to mitigate the penalty. Under the procedure in Section G.1.d.iii. of the 2019 TACP and based upon the Player's admissions the AHO confirms that the Player is found to have committed all of the Corruption Offenses set out in the Notice. The Player is found to have breached Sections D.1.d., D.2.a.i. and D.2.a.ii. of the 2017 TACP.

28. The Covered Person has co-operated in every step of the present matter from the time he was first interviewed by the TIU investigator. When he was confronted by the TIU he admitted his misconduct. The Player expressed genuine remorse for his actions. He consistently and readily admitted the Corruption Offenses he has now been found to have committed. He was apologetic throughout and gives the AHO an impression that he was rather naïve in his conduct and duped by his fellow tennis player, a known corruptor.

29. His co-operation throughout has made the task of the TIU and investigators much easier than it would have otherwise been. In his admission he has saved the TIU the extensive costs of conducting a Hearing and being put to

the proof of the now admitted Corruption Offenses. This co-operation and his apologies serve to mitigate what might otherwise be the sanction imposed.

30. When determining a sanction, it is important for an AHO to ensure both that the Player is punished, and the sanction will act as a deterrent for other players who find themselves in similar circumstances. The AHO must also use the jurisprudence under the program as a guide in order to ensure that any sanction imposed is consistent with other decisions. However, it should be remembered that sanctions are very fact specific.
31. Contriving a match is a serious offense that severely undermines the integrity of the sport of tennis. It follows that any sanction handed down must reflect the seriousness of this offense. However, the contriving of the Match in this case has a limited impact on the wider sport of tennis on an international or world scale. The Player's conduct was isolated to a single Event and there is no evidence of the Player being connected to any other known corruptors [REDACTED] or that the Player might corrupt anyone else. Some adjustment of the sanctions from the decided cases is justified on this basis. The Player's prompt admission of guilt, his cooperation with the TIU and expressions of remorse all mitigate the sanction that ought to be imposed. Therefore, this case may be considered outside the range of three to five years ineligibility suggested in the referenced tennis decisions.
32. The difficulty with the submission of the PTIOs is the fact that it is based in part on the quantum of Corruption Offenses being four in total. However, an

analysis of how they arise must be taken account of. One of the Section D.2.a.i. breaches relates to the failure to report a corrupt approach by [REDACTED] the day before the Match. The second D.2.a.i. breach, the failure to report knowledge or suspicion that [REDACTED] committed a Corruption Offense (the Fourth Charge) arises out of that same match. Therefore, three out of the four breaches of the TACP arise out of and surround a single incident of contriving a match. They ought to be viewed as a single violation of the TACP. Merely comparing the number of infractions in this case to that of other tennis cases is not a sufficient exercise in ensuring the sanction is proportionate to the offense. For this further reason, I do not place this case in the range of three to five years ineligibility as some of the other cases have done. I place this case at the very low end of that range for offenses of contriving a match.

33. The aggravating factor in this analysis is the additional non-reporting event in Charge 3. The facts suggest that the Player was willing to keep communication lines open with a corruptor although he puts forth in his submission a different characterization of those circumstances. The sanction for a non-reporting offense has been elevated to a possible lifetime ban from a limited three year ban. This apparently has been done to reflect the fact that the tennis community is neglecting its responsibilities arising from the Duty to Report. The TIU is very dependent on this process to try and discover and control corrupt behavior in tennis. As a consequence of the lengthened suspension period this offense must be considered as more serious now than it has been treated by AHOs in the past.

34. There are two other factors leading to my assessment of the appropriate sanction in this matter. The co-operation from the time of confrontation by the TIU and the Player's frank manner of dealing with this matter thereafter, even at a time of personal distress, are both mitigating aspects.
35. Therefore, based upon previous decisions involving similar conduct and circumstances and taking into consideration the isolated nature of the Player's conduct and for all of the foregoing reasons I find that a three year period of ineligibility is appropriate. One year of the period of ineligibility should be suspended based on the mitigating factors discussed above.
36. Under Section H.1.a. the Program gives the AHO the discretion to impose fines up to \$250,000 (US) plus any amount paid as a bribe for corruption. The seriousness of the offense supports the imposition of a fine as well as the fact that the Player did receive \$300 in connection with his contriving the outcome of a match. However, any fine should also take into consideration the economic circumstances of Nigeria as well as the Player's own circumstances. On the facts of this case I agree with the submission of the PTIOs that a fine of \$5,000 (US) is appropriate to serve as both punishment and deterrent with one half of the amount suspended assuming no further violations of the TACP during the period of ineligibility.

CONCLUSION

37. Based upon all the foregoing analysis and reasons, the AHO determines that because of the breaches of Sections D.1.d., D.2.a.i. and D.2.a.ii. the Player is

declared ineligible to compete for three years with a period of one year suspended on condition of good conduct.

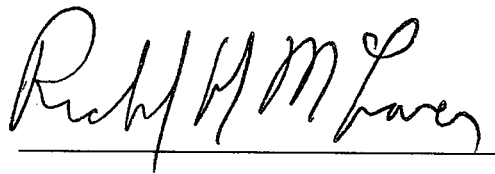
38. The appropriate fine under Section H.1.a(i) for the breach of the Program provisions is \$5,000 (US), one half of which is to be suspended on condition of good conduct. However, should there be any further breaches of the Program during the three year period of ineligibility, the entire fine will be payable by the end of the three year period.
39. Based upon all of the foregoing the AHO makes the following orders:

ORDERS

- i. The Player is found to be a Covered Person under the Rules of the 2017 Program.
- ii. It is ordered that for breaches of Sections D.1.d., D.2.a.i. and D.2.a.ii. of the 2017 Program and pursuant to Section H.1.a.(iii) a three year period of ineligibility for participation in any Event organized or sanctioned by any Governing Body is imposed which shall be publicly reported as required by Section G.4.e. One year of that period of ineligibility will be suspended subject to good conduct by the Player as described in iv. below.
- iii. It is ordered that a fine of \$5,000 (US) is imposed under Section H.1.a(i). One half of the fine is suspended provided the Player acts in good conduct as described in iv. below.

- iv. The final year of the period of ineligibility and one half of the fine will be suspended provided the Player acts in accordance with the TACP without any misconduct or breach of the TACP throughout the three year period of ineligibility. Should such misconduct or breach occur at any time in the three year period the full sanction shall immediately come into effect.
- v. The commencement date of the period of ineligibility will be considered to have commenced with the issuance of the Provisional Suspension on 10 May 2019 and continue for the time span stipulated in these orders.
- vi. Under Section G.4.d. this Decision is a *“full, final and complete disposition of the matter and will be binding on all parties.”*
- vii. The Decision herein may be appealed under Section I.3 for a period of *“twenty business days from the date of receipt of the decision by the appealing party.”* The appeal is to the Court of the Arbitration for Sport in Lausanne, Switzerland.

DATED at LONDON, ONTARIO, CANADA THIS 28TH DAY JUNE 2019.

A handwritten signature in black ink, appearing to read 'Richard H. McLaren', written over a horizontal line.

Richard H. McLaren
AHO