

In the Matter of an Alleged Corruption Offense under the Tennis-Anti Corruption Program

BETWEEN

Osman Torski (hereinafter the "Player")

- 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 Player: Mr. Maximillian Vogt

Representing the PTIOs: Stefania Genesis, Solicitor
Kendrah Potts, Barrister

Anti-Corruption Hearing Officer,
Tennis Anti-Corruption Program
(hereinafter "AHO") Professor Richard H. McLaren, O.C.

DECISION of the AHO

PARTIES

1. The PTIOs¹ are appointed by each Governing Body (ATP, GSB, ITF, and WTA) who participates in the Tennis Anti-Corruption Program (the “TACP”). They have the responsibility to administer the TACP and direct the TIU.
2. Osman Torski (hereinafter the “Player”) is a 17-year-old professional tennis player. He has been registered for an ITF IPIN since 2012 (as a Junior except for 2017 when he also registered for the Men’s circuit). By registering for an ITF IPIN the Player confirmed his agreement to comply with the rules of tennis including the TACP. Therefore, the Player is a Covered Person under the TACP.
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.

BACKGROUND

4. The Notice of Charge (the “Notice”) was sent to the Player on 6 August 2018. The Player failed to reply by the specified deadline. On 12 September 2018 the Player’s mother contacted the AHO explaining that the Player had only recently seen the Notice and requested further time to respond. This was granted. In the Notice, the Player is charged with breaching Section D.1.d. of the TACP:

“It is alleged that you breached Section D.1.d. in agreeing to fix the Match”.

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

5. The Player's first round match at the ITF Germany F15 Futures tournament (the "Match"), which took place between 16 and 22 October 2017, [REDACTED]. The Player lost the match 6-0, 6-1.
6. Following the Match the Player told an alleged friend [REDACTED] via Snapchat messages that he was offered €300 to lose the Match and that he received an additional €120 for competing in the first round ([REDACTED] believed to be tournament prize money for playing and losing in the first round).
7. On 17 October 2017 sometime following his conversation with the Player, [REDACTED] and informed him about what had transpired between he and Torski. [REDACTED] that the situation would be uncomfortable but that he had to report the incident to the TIU.
8. The next day [REDACTED] contacted the TIU by email informing them that on the evening of 17 October 2017 he had been told by the Player, via Snapchat, that he had fixed the Match. [REDACTED] reported that the Player told him "*two Italians went to the toilet with him*" and gave him €300 to agree to lose the Match.
9. Subsequent to his meeting with [REDACTED] then reported the information to [REDACTED] [REDACTED] reported the incident on 20 October 2017 to [REDACTED] [REDACTED] then spoke with both the Player and [REDACTED] The Player alleged that he was joking because he "*wanted to be cool*".

PROCEDURAL SUMMARY

10. On 21 November 2018 the AHO received a German language document from [REDACTED] which when translated was found to be a sworn statement from the Player claiming to have invented untrue reasons for his defeat in his match against [REDACTED]. The Player claimed that everything he had said relating to the Match was not true. The AHO acknowledged receipt of the document and advised that since proceedings under the TACP are done in the English language, all documents submitted should be accompanied by a translation.
11. On 27 November 2018, in accordance with Section G.1.g. of the Program, a pre-hearing telephone conference call was held to determine the procedure for the Hearing. During the course of that call all parties participating in the telephone call acknowledged that the AHO was properly appointed and qualified as an independent, impartial, neutral adjudicator to render a determination in this case. The Parties had no objections to the jurisdiction of the AHO; or to his being the decision maker as the AHO in this matter. Ultimately all Parties agreed that the matter was arbitrable.
12. In accordance with Procedural Order No. 1 ("PO 1") issued on 27 November 2018, Mr. Vogt was to provide written direction from the legal guardian of the Player within two (2) business days after receipt of the PO 1 confirming that he (Vogt) was to be the spokesperson for the Player; and, that he had authority to act on behalf of the Player. The requested direction/authorization was received on 5 December 2018.
13. In accordance with PO 1 the PTIOs provided disclosure of relevant documents to the representative for the Player.

14. A further conference call took place between Kendrah Potts, Max Vogt and the AHO on 17 December 2018. This resulted in the issuance of Procedural Order No. 2 (“PO 2”).
15. In accordance with PO 2 and agreed upon extensions, the PTIOs submitted their brief with exhibits on 28 February 2019. The Player submitted his brief on 13 April 2019.
16. Following a review of the submissions on 18 April 2019 the AHO wrote to the Parties advising that he had reviewed their submissions. He further advised that he wanted to establish a date on which to hold a conference call to determine the remainder of the procedure in this matter. This process was dictated by PO 2.
17. That conference call with the representatives of the Parties was never held. On 21 April 2019 Mr. Vogt raised what he called “*wider moral and legal questions that need answering*” before proceeding further with the case. He did so because he was of the view that there was a need to protect the rights of the minor who ought to have some party provide the wherewithal to defend the case. At that time he sought to “*suspend the current OT case until we have clarity about whether a minor tennis player has the right to legal represented with support from the TIU.*” He advised that it was his view that: “*the best way forward would be to keep the matter in-house and for the TIU to convene a private court of arbitration with a team of impartial legal advisers*”.
18. On the 24 April 2019 the AHO wrote to the Parties’ representatives indicating that the matter needed to proceed in accordance with the TACP and not as suggested by Mr. Vogt. In that correspondence, the AHO advised that if there was no resolution of the stalemate then after 1 May

2019 he would proceed to ask for the submissions of the PTIOs and deal with the matter thereafter. This step is required by the TACP.

19. On the 25 April 2019 Mr. Vogt replied raising numerous matters but advising that his submission to the AHO was complete and stating that he was doubtful “ ... *of any value that can be added by further discussion unless the prosecution has (for the first time) uncovered any actual evidence in this case*”. The AHO concluded that Vogt was stating that a further conference call to discuss the procedure was of little value.
20. At this junction the AHO indicated that miscommunications had occurred on the part of all parties. In a final attempt to put the matter back on track as defined by the TACP the AHO attempted to sort out the differences by starting a “*fresh page in this process*” by putting the past behind “*except for your written submissions sent to me*”. The AHO indicated that a hearing was to be held in order to “*hear the young man and have him explain the situation in his own words*”. The AHO further indicated that the parties needed to discuss a methodology that would lead to a hearing and set out in detail what needed to be discussed in a conference call. Mr. Vogt strongly disagreed with that approach in his 6 May 2019 email to the AHO. Mr. Vogt then proceeded to detail a number of points concerning what was transpiring in the case.
21. As a consequence of all that has happened in this case the AHO decided that the best way to proceed was to rely on the PTIOs’ submission of 28 February 2019 and Mr. Vogt’s submission of 13 April 2019. The remainder of this Decision is based upon the written submissions of the representatives of the Parties.
22. The allegations in the Notice refer to actions that took place in the calendar year 2017. Therefore, the rules of the 2017 TACP apply to the

(ii) *The Player*

28. The representative for the Player submitted that the Player stated he lost to try and deflect [REDACTED] taunting about losing the Match. Further, [REDACTED] and the Player were not friends. They were rivals, who as teammates, relied on each other at this stage in their career. Further, [REDACTED] acted irresponsibly by not performing any sort of due diligence to confirm the Snapchat message.
29. The Player's representative further submitted that based on the presumption of innocence, the PTIOs needed to prove the Player's guilt beyond a reasonable doubt but have failed to do so. Mr. Vogt pointed to the rivalry as raising a reasonable doubt as the Player was simply trying to show [REDACTED] who had received a [REDACTED] that he was important and that people with money went to him as well. In short, the whole discussion was about bragging.
30. It was further submitted that the PTIOs were incorrect in stating that there was a high level of detail in the Player's message. Instead, it was based on clichés.
31. Lastly, it was submitted that the Player should be reprimanded for his thoughtless behavior but given his age a caution or temporary suspension would be sufficient. Further, [REDACTED] should also be reprimanded for not verifying the truth of the statements and thoughtlessly involving the TIU, [REDACTED] should be obliged to attend coaching lessons.

THE RELEVANT PROVISIONS OF THE TACP

D. Offenses (2017)

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 or any other aspect of any Event.*
- ...

F. Investigation and Procedure (2018)

1) Anti-Corruption Hearing Officer.

- a) *The TIB shall appoint one or more independent AHOs, who shall be responsible for (i) determining whether Corruption Offenses have been committed, and (ii) fixing the sanctions for any Corruption Offense found to have been committed.*
- ...

G. Due Process (2018)

3) Burdens and Standard of Proof.

- a) *The PTIO (which may be represented by legal counsel at the Hearing) shall have the burden of establishing that a Corruption Offense has been committed. The standard of proof shall be whether the PTIO has established the commission of the alleged*

Corruption Offense by a preponderance of the evidence.

...

- c) *The AHO shall not be bound by any jurisdiction's judicial rules governing the admissibility of evidence. Instead, facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO.*

H. Sanctions (2017)

- 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.*

b) ...

c) ...

DECISION ON THE MERITS

32. None of the submissions of the Player are accompanied by any evidence. They are merely assertions and speculations by the representative of the Player. However, there is one thing that is not denied and is established

by the information before the AHO. Both sides agree that the statements were made by the Player as described in the Notice. The explanation for doing so being that they were uttered as a joke. Therefore, there is evidence agreed upon by both parties' submissions that forms the foundation of the alleged Corruption Offense.

33. The purpose of the TACP is set out in Section A entitled "Introduction". The primary goal is to maintain the integrity of tennis by protecting against any efforts to impact improperly the results of any match.
34. There is no evidence that what the Player said was a joke. The submission that this was a petulant teenager responding to the needling of his opponent is not established by any evidence in the face of the fact that the statements were made. However, if I take the submission to have some validity then I can decide the matter as follows.
35. Even in granting the Player considerable leniency in what has alleged to have gone on here, he has failed to protect the sport he loves and hopes to succeed at in the future. In his course of action as either a corrupt actor or a temperamental teenager misbehaving he has failed to serve the purpose of the TACP, which is to protect the integrity of tennis. Therefore, he has committed a breach of the policy of the TACP even if he has not breached the technical Corruption Offenses aspects of Section D. This conduct cannot go unpunished.
36. In the circumstances of this matter I find that an appropriate sanction should be a nine month suspension under Section H. However, in taking account of the Player's age in particular and being unable to rule out entirely that the matter was not more than a joke or teenage banter I order that six months should be suspended.

37. I have the power under the TACP to fine the Player for a Corruption Offense. Given the manner in which I have been required to deal with this case I do not find it appropriate to impose a fine when I do not have any confirmation of a payment of money being made to the Player. Therefore, I decline to exercise my jurisdiction to fine the Player.
38. Section G.4.e. of the 2019 TACP provides the procedure to be applied in the publication of this Decision. I leave it to the PTIOs to determine if there ought to be any public reporting of this Decision given that the Player was at the time under the age of eighteen.

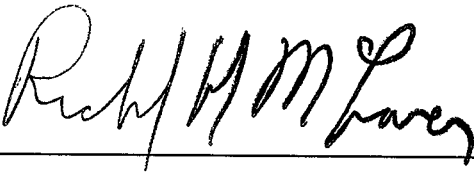
The Anti-Corruption Hearing Officer Rules that:

39. (i) Torski is a Covered Person under the 2017 TACP. As such he is found to have committed a Corruption Offense under Section D.1.d. by asserting that he attempted to contrive an aspect of an Event.
- (ii) Under Section H.1.a.iii. Torski is declared ineligible from participation in any Event organized or sanctioned by any Governing Body for a period of nine months. Six months of the period of ineligibility will be suspended on terms set out in (iv) below.
- (iii) There will be no fine imposed pursuant to Section H.1.a.i.
- (iv) Six months of the period of ineligibility will be suspended provided the Player acts in accordance with the TACP without any misconduct or breach of the TACP throughout the entire nine month period of ineligibility. Should such misconduct or breach occur in the nine month period then the full sanction shall arise immediately and the period of ineligibility will run with full force and effect from the date of breach for a further period of nine months.

(v) As prescribed in Section G.4.d. this Decision is a “*full, final and complete disposition*” of this matter. The orders herein take effect from the date of this Decision.

(vi) The Decision herein is appealable 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 Arbitration for Sport in Lausanne, Switzerland.

DATED at LONDON, ONTARIO, CANADA THIS 29TH DAY of MAY 2019.



Professor Richard H. McLaren, O.C.
AHO