

IN THE MATTER OF CHARGES BROUGHT UNDER THE TENNIS ANTI-CORRUPTION PROGRAM

BEFORE ANTI-CORRUPTION HEARING OFFICER CHARLES HOLLANDER KC

BETWEEN

THE INTERNATIONAL TENNIS INTEGRITY AGENCY

AND

**(1) DRAGOS MADARAS
(2) PATRICK MADARAS**

DECISION OF ANTI-CORRUPTION HEARING OFFICER

1. Dragos Madaras (“Dragos”) is a Swedish national and professional tennis player. He had a singles ranking at best of 191 in July 2023.
2. Patrick Madaras (“Patrick”) is his brother. He lives in Sweden but is not a professional tennis player.
3. These charges brought by The International Tennis Integrity Agency (“ITIA”) arise from an incident on Wednesday 28 June 2023 at the Wimbledon Qualifying Event in London. The ITIA alleges that Dragos failed to co-operate by refusing to hand over a mobile phone (“the Black phone”) to ITIA Investigators and Patrick facilitated the refusal to hand over the Black phone.

Factual summary

4. The ITIA had been investigating a series of betting alerts and suspicious betting in relation to matches played by Dragos between 2017 and 2020 where match results appeared to follow the course of suspicious bets. In 2022 Alan Boyd, an ITIA investigator had previously encountered Dragos at a tournament in July 2022 in Bacau, Romania, when he made a forensic examination of a telephone handset which had been provided after a Demand. The handset provided contained little data and there was suggestion Dragos had recently lost his phone. The ITIA were concerned that Dragos had failed to surrender his primary handset.

5. Thus, in order to further their investigations, the ITIA sought to examine the phone used by Dragos. Two ITIA investigators, John Nolan and Alan Boyd approached Dragos during the Wimbledon Qualifying Event after he had lost his second round qualifying match on Wednesday 28 June 2023 and asked him to hand over the Black phone which they had seen him using. Exactly what then happened is in dispute and will be considered in detail below. The ITIA say his failure to hand over the Black phone was a breach of the Tennis Anti-Corruption Programme (TACP). In this event, Dragos took a different phone (“the Blue phone”) from his bag and handed it over to the ITIA.
6. Patrick’s involvement in all of this was somewhat fortuitous. He drives a fork lift truck in Sweden. Dragos had offered to take him to Wimbledon Qualifying as a birthday present. Patrick’s birthday was on 28 June. For this purpose Dragos incorrectly described him as his Hitting Partner on the form whereby he applied for Wimbledon Accreditation. One of the consequences of this was that in order to obtain accreditation, Patrick had to sign up to TACP and became a “Related Person” which is part of the definition of “Covered Person” under TACP. Thus Patrick became bound by TACP even though he has nothing to do with professional tennis.
7. The ITIA say that after the ITIA Investigators had asked Dragos to hand over the Black phone, he surreptitiously passed it to Patrick who then refused to hand the Black phone over and ran away. Thus the ITIA bring charges of non-co-operation against Patrick as well as Dragos under the TACP. Dragos and Patrick say that the Black phone was Patrick’s phone and Dragos was merely borrowing it and had no right to give it to ITIA without Patrick’s consent which was not given. They say that Dragos had returned it to Patrick before the ITIA Investigators asked for the Black phone, that the Investigators tried to snatch it from Patrick and that Mr Nolan was aggressive to Patrick.
8. Dragos was interviewed by the ITIA on the same day, 28 June 2023. The transcript of this interview is an important document, as matters would, 45 minutes after the incident, be fresh in everyone’s mind. Patrick was interviewed by the ITIA at the end of August 2023.

The Charges

9. ITIA brought the following charges against Dragos under TACP 2023, supported by a lengthy factual narrative.

F.2.d (Failure to comply with a Demand)

“If the ITIA has reasonable grounds to believe that a Covered Person may have committed a Corruption Offense and that access to the following sources is necessary to assist the investigation, the ITIA may make a Demand to any Covered Person to furnish to the ITIA any object or information regarding the alleged Corruption Offense, including, without limitation (i) personal devices (including mobile telephone(s), tablets and/or laptop computers) so that the ITIA may copy

and/or download data and/or other information from those devices relating to the alleged Corruption Offense...”

F.2.b (Failure to co-operate)

“All Covered Persons must cooperate fully with investigations conducted by the ITIA, including giving evidence at hearings, if requested...A Covered Person’s failure to comply with any Demand, preserve evidence related to any Corruption Offense or otherwise cooperate fully with investigations conducted by the ITIA, may result in an adverse factual inference against the Covered Person in any matter referred to an AHO”.

(For the avoidance of doubt, each of the alleged breaches in this table constitutes a Corruption Offense as expressly stated at the outset of Section D of the Program, entitled “Corruption Offenses and Reporting Obligation”, namely:

“Commission of any offense set forth in Sections D, E or F of this Program shall constitute a Corruption Offense for all purposes of this Program.”

On, and subsequent to, 28 June 2023 you failed to comply with a Demand which was made to you by the ITIA to provide to the ITIA the black mobile phone which you had used and had been in your possession on 26 June and 28 June 2023 whilst you were at the Wimbledon Qualifying and Community Sports Centre, Bank Lane, Roehampton. It is the ITIA’s primary case that this black mobile phone belonged to you, alternatively it was in any event a personal device that was in your possession and/or control.

Your deliberate refusal to provide the black mobile phone to the ITIA investigator, Mr John Nolan, when asked to do so on 28 June 2023 (and your decision instead to hand the phone to your brother, Patrick Madaras) and/or your failure to comply with the Demand also amounted to a failure to cooperate with the investigation being conducted by the ITIA. This investigation relates to five match alerts received by the ITIA in 2017-2020 from betting operators in relation to suspicious betting for matches in which you were involved, together with a report from another Covered Person.

TACP 2023 D.1.c (Obtaining accreditation which leads to the commission of a Corruption Offense)

“No Covered Person shall, directly or indirectly, offer, provide, seek or obtain accreditation to an Event (i) for the purpose of facilitating a commission of a Corruption Offense; or (ii) which leads, directly or indirectly, to the commission of a Corruption Offense, regardless of whether any money, benefit or Consideration is offered or discussed”.

D.1.1 (Obtaining accreditation by misrepresentation)

“No Covered Person shall make any misrepresentation to seek or obtain on behalf of any person at any Event any registration or accreditation that allows access to

areas such person would not otherwise be permitted to access (for example, seeking accreditation for an individual to a 'players only' area by falsely certifying that a person is the Covered Person's coach)".

On 24 June 2023, you obtained accreditation for your brother, Patrick Madaras, to attend the qualifying tournament for the Wimbledon Championships by misrepresenting that he was your "hitting partner", when this was not true or accurate. Further, the fact that you obtained accreditation for Patrick Madaras to attend the qualifying tournament for the Wimbledon Championships led to the commission of the Corruption Offenses under Sections F.2.b and/or F.2.d as set out above and/or the Corruption Offenses committed by Patrick Madaras (as identified in the ITIA's covering letter).

10. The following charges were brought against Patrick.

F.2.b (Failure to co-operate)

"All Covered Persons must cooperate fully with investigations conducted by the ITIA, including giving evidence at hearings, if requested...A Covered Person's failure to comply with any Demand, preserve evidence related to any Corruption Offense or otherwise cooperate fully with investigations conducted by the ITIA, may result in an adverse factual inference against the Covered Person in any matter referred to an AHO".(For the avoidance of doubt, each of the alleged breaches in this table constitutes a Corruption Offense as expressly stated at the outset of Section D of the Program, entitled Corruption Offenses and Reporting Obligation, namely:

"Commission of any offense set forth in Sections D,E or F of this Program shall constitute a Corruption Offense for all purposes of this Program."

On 28 June 2023, whilst you were present as a Covered Person at the Wimbledon Qualifying and Community Sports Centre, Bank Lane, Roehampton ("the Site"), you failed to comply with verbal demands made to you by ITIA investigator, Mr John Nolan, to hand over (a) the black mobile phone which had just been handed to you by your brother, Dragos Madaras, after Dragos had been seen using it and had himself been asked to hand it over to ITIA investigators Mr Nolan and Mr Alan Boyd; and (b) the other phone which you were also holding. Instead of handing over the phones when asked to do so, you ended up running away from the investigators and left the Site.

Your failure to comply with those verbal demands from Mr Nolan and your deliberate refusal to provide the black mobile phone and/or the other mobile phone to Mr Nolan on 28 June 2023, or subsequently, amounted to a failure to cooperate with the investigation being conducted by the ITIA into Dragos Madaras.

The said investigation relates to five match alerts received by the ITIA in 2017-2020 from betting operators in relation to suspicious betting for matches in which Dragos

was involved, together with a report from another Covered Person.

F.2.c (Failure to preserve evidence)

“When a Covered Person becomes aware that the Covered Person has evidence related to any Corruption Offense, but in any event no later than when a Covered Person receives an ITIA request for an initial interview or otherwise becomes aware of any ITIA investigation involving any Covered Person, the Covered Person shall (i) preserve and not tamper with, damage, disable, destroy or otherwise alter any evidence (including any personal devices described in Section F.2.d.(i)...related to any Corruption Offense”.

By letters to you from the ITIA dated 12 and 28 July 2023, you were informed that you were under investigation for a potential breach of the Program (non-cooperation) and invited to attend an interview with the ITIA. During your subsequent interview with the ITIA on 31 August 2023, you asserted that you had sold the abovementioned (Samsung) black mobile phone and you thought this was “a month ago”.

Selling this phone at a time when you knew at least that: (a) the phone was evidence that had been requested from Dragos and from you by the ITIA on 28 June 2023; (b) Dragos and you were Covered Persons and bound by the Program; (c) Dragos and/or you were under investigation by the ITIA in relation to Corruption Offenses; and (d) the phone was related to one or more Corruption Offenses, constitutes a breach of F.2.c as you failed to preserve the phone.

11. TACP B12 defines “Demand” as “*a formal written demand for information issued by the ITIA to any Covered Person*”.

Jurisdiction

12. There was no dispute as to the jurisdiction of this tribunal.
13. Dragos is a professional tennis player and is a Covered Person under sections B.27 and B.10 respectively of the TACP. All professional tennis players are required to endorse the ITF Player Welfare Statement and confirm that they are bound by and will comply with the TACP. Dragos has endorsed this Player Welfare Statement every year since 2010.
14. Patrick is a Related Person and also a Covered Person under sections B.31 and B.10 respectively of the TACP and is bound by (and agreed to comply with) the TACP. On 24 June 2023, Patrick electronically signed the official Wimbledon Championships 2023 guest registration form to attend the Championships as Dragos’ guest. In doing so, Patrick expressly confirmed that he accepted and would comply with the “Terms & Conditions of

Accreditation”. Those Terms & Conditions of Accreditation expressly provided that Patrick would abide by the terms and conditions set out in Appendix A, which in turn required Patrick to comply with the terms of the TACP.

Provisional Suspension

15. A notice of Provisional Suspension was issued by the ITIA to Dragos on 17 August 2023. On 22 September 2023, AHO Richard McLaren rejected Dragos’ appeal and upheld the imposition of the Provisional Suspension.

The Hearing

16. A remote hearing took place on 28 February 2024. The ITIA was represented by Mr Richard Liddell KC and Ms Julia Lowis. Dragos was represented by Mr Ionut-Cristian Cernodolea. Patrick represented himself. The tribunal is grateful to all those involved for their assistance.

17. The ITIA led evidence from Mr John Nolan, Mr Alan Boyd, Mr Glen Shackel, Mr Denys Gee and Ms Nicola McDermott.

18. Dragos and Patrick both gave evidence.

19. Dragos denies all of the Charges other than he admits breaching section D.1.1 of the Program by obtaining an accreditation by misrepresentation.

20. Patrick denies each of the Charges.

Burden and Standard of Proof

21. Pursuant to Section G.3.a of the TACP, the ITIA has the burden of establishing that a Corruption Offense has been committed.

22. The standard of proof is whether the ITIA has established the commission of the alleged Corruption Offense by a “preponderance of the evidence”.

Disputed facts

23. Exactly what happened on 28 June 2023 is in dispute and it is necessary for me to make findings as to what happened. I heard evidence from the two ITIA Investigators and from Dragos and Patrick, who gave different versions.
24. In my judgment Mr Nolan and Mr Boyd of the ITIA came up to Dragos after he had completed his second round qualifying match and, Mr Nolan having seen him speaking on the Black phone, asked him to hand it over. He surreptitiously passed it behind his back to Patrick, notwithstanding the Investigators asking him not to do so and Patrick then ran off. Dragos called him back but Patrick declined to hand it over. The brothers asserted that the Black phone was Patrick's phone, not that of Dragos. There was something of a momentary scuffle, Mr Nolan says he thought Patrick, having returned, was handing the phone over to him, and reached for it, whereas Patrick was not handing it over, and thus Mr Nolan touched the phone, and may have touched Patrick in the process before Patrick pulled away. I regard the suggestion by Patrick that there was something close to an assault on him as a gross exaggeration and reject the suggestion that Mr Nolan was unnecessarily aggressive and intimidating.
25. I also reject the suggestion by Dragos and Patrick that Dragos had already passed the phone to Patrick before the Investigators arrived.
26. Dragos and Patrick say they did not know who the Investigators were. Dragos suggested they might have been detectives hired [REDACTED] or anti-doping officers. But it is important to recall that Mr Nolan and Mr Boyd were wearing accreditation badges and introduced themselves. There may have been an initial moment when Dragos did not know who they were but that could not have lasted long. Although both Dragos and Patrick gave evidence through interpreters, it is apparent that Dragos at least understands and speaks good English.
27. I regard Dragos' interview with the Investigators as important evidence. It was about 45 minutes after the incident when it was fresh in everyone's mind. It is important to see both what the Investigators put to Dragos as well as his replies, because the Investigators were putting facts to Dragos based on their recollection of what had happened 45 minutes ago. They clearly put to Dragos that he had passed the Black phone to Patrick when they requested the handset and he does not deny that:

JN Yes. So what happened is you had the phone in your hand. I introduced myself, said my name and said I'm from the ITIA and Alan was standing behind me at that point and I said, I think, you know, my colleague because I know that Alan's interviewed you in the past.

DM: I...yes I look at you, I didn't even...

JN: Okay.

DM: Look at...I didn't even saw you.

JN: At that point you had a phone in your hand. The black phone.

DM: Yes.

JN: And I said to you that I wanted you to hand over that phone because of the powers we had under the ITIA, because I wanted to examine the phone that you had at that time.

DM: I know, but that's right. That's right. And I completely, completely agree what you say.

28. On several occasions during the course of the interview Dragos admits that when the Investigators ask for the Black phone, it was in his hand.
29. In my judgment the Black phone was Dragos' phone, or at the very least he had unrestricted access to it such that he would have been entitled to hand it over to ITIA without requiring Patrick's consent. The evidence in support of that is as follows:
 - a. There are no less than five occasions when Dragos was seen by the ITIA Investigators using the Black phone, referred to by Mr Nolan at paras 14,15,16,17 and 19 of his witness statement, two occasions on 26 June 2023 and three on 28 June 2023. On occasion when he finished using the Black phone, he put it in his shorts pocket. He certainly did not behave as though it was Patrick's phone.
 - b. Dragos offered his Blue phone to the Investigators and said that was his only phone. But that is difficult to square with the limited material on the Blue phone, which has no WhatsApp or Telegram, no gaming or accessing website activity, and the call activity, starting on 5 May 2023, consists of a handful of calls other than on or just before 28 June 2023. It has all the hallmarks of being a subsidiary phone. Dragos referred to use of WhatsApp or Telegram and to calls he had made but they are not on the blue phone.
 - c. The fact, as I have found, that when asked to provide the Black phone to the Investigators, Dragos surreptitiously passed it to Patrick and then subsequently denied that.
 - d. It was never explained why Patrick was unwilling to hand over the Black phone. In 2022, Dragos had been asked to hand over his phone to the ITIA during an investigation and was well aware of the process. I find that Patrick did not hand over the Black phone because he knew Dragos did not want the ITIA to have that particular phone.
30. Where there is a dispute between the evidence of Patrick and Dragos and the evidence of Mr Boyd and Mr Nolan, having heard all the witnesses, I prefer the evidence of Mr Boyd and Mr Nolan. I did not regard the evidence of either Patrick or Dragos as reliable. What they said differed in numerous respects from what they had said at interview and Dragos, in particular, often failed to answer the question that was put to him.
31. As to other points raised on behalf of Dragos:
 - a. There was a complaint that there was no CCTV, although there were CCTV cameras visible. This complaint rather fell away in the light of evidence that the CCTV was not

operational and had not been for some time, and that the Investigators would have been unlikely to be aware of that.

- b. It was said to have been unfair for the ITIA to refer to the provisional evidence in support of match-fixing on the part of Dragos. On the contrary, this is important for reasons I set out below.

The Charges: Dragos

32. *F.2.d (Failure to comply with a Demand)*. Mr Nolan said he left the written Demand in the ITIA offices, which are situated in the grounds where the Wimbledon Qualifying Event took place, and it was not provided until 2.21pm, during the subsequent interview with Dragos. As worded, the Demand requires Dragos to hand over devices referred to in the Schedule, but no devices are referred to in the Schedule. Therefore, it does not seem consistent with the wording of the charge to treat the fact Dragos knew what the ITIA wanted was the Black phone as sufficient for this charge to be proved. I do not find this charge proved.

33. *F.2.b (Failure to co-operate)* Although failure to comply with a Demand (which I have found was not breached) is part of this charge, this charge is not so limited. I find the failure to hand over the Black phone a breach by Dragos of F.2.(b).

34. *D.1.c (Obtaining accreditation which leads to the commission of a Corruption Offense)* The obtaining of accreditation did not, directly or indirectly, lead to the commission of a Corruption Offence. There is no causal connection between Patrick's accreditation and the failure to co-operate by Dragos. This charge was never intended to apply in circumstances such as these and I do not find it proved.

35. *D.1.1 (Obtaining accreditation by misrepresentation)* This charge is admitted because Patrick was not Dragos' "hitting partner". However, if he had sought accreditation for Patrick as his brother, he could have obtained accreditation, although Patrick would not have had access to courts or changing rooms, neither of which have any significance in the present case. So this seems to me a breach which, in the present case, was not at all serious.

The Charges: Patrick

36. *F.2.b (Failure to co-operate)* I find this proved for the same reasons as for Dragos. Patrick assisted Dragos in seeking to prevent the ITIA getting hold of the Black phone.

37. *F.2.c (Failure to preserve evidence)*. The ITIA wrote to Patrick in July 2023 but did not expressly ask him to preserve the Black phone. He says he sold it in summer 2023, but it is unclear when. There was no proven failure after a request to preserve the Black phone and I do not find this charge proved.

Sanction: Dragos

38. The Note to the Sentencing Guidelines provides as follows:

“Note: The culpability and impact of a Covered Person’s failure to cooperate should ordinarily be linked to the underlying Corruption Offense(s) that the ITIA is investigating. For example, if the ITIA is investigating a relatively minor Corruption Offense which would qualify for disposition under TACP Section F.6. (no more than a six month suspension and/or \$10,000 fine), the failure to cooperate with an ITIA investigation related to that matter should ordinarily be categorized in Category 3 and receive no more than a six month suspension and/or \$10,000 fine.

Alternatively, if the ITIA is investigating one or more Major Offenses, then the Covered Person’s failure to cooperate with the ITIA’s investigation of those offenses should ordinarily be categorized akin to the Major Offense(s) being investigated and therefore carry a correspondingly high sanction to avoid incentivizing a Covered Person to fail to cooperate to avoid a more serious charge and sanction.”

39. I refer to my recent decision in *ITIA v Broville* (11 January 2024) at [63], commenting on the Note in the Sanction Guidelines :

“An example illustrates the point being made. A policeman stops a car driving erratically and seeks to breathalyse the driver. He refuses to be breathalysed. The punishment for refusal is normally the same as if the breathalyser had shown a positive result. Any other result would encourage non-compliance.

The present case provides a vivid illustration of the point. The ITIA had evidence which potentially implicated M Broville on charges of match fixing, which if proved would have led to a long ban. They made it clear they were investigating match fixing and asked for his electronic devices in order to obtain the first hand evidence which would potentially prove those charges. M Broville refused to give it and indeed the ITIA still has not seen his phone. The position is the same as in the breathalyser example and the Note to the Sanctioning Guidelines makes precisely this point.... it is important that players understand they cannot get out of match fixing allegations by refusing to hand over mobile devices. Otherwise the enforcement system would entirely break down .”

40. I heard submissions on where this sits in the Sanctioning Guidelines. In the *Broville* case, I banned M Broville for 7 years for refusing to hand over his phone against the background of match fixing suspicions. I have found here that Dragos refused to hand over his phone but passed it by a subterfuge to his brother and untruthfully claimed it was his brother’s phone. It is relevant to note the Investigators did not refer to match fixing on the present occasion. I regard a four (4) year six (6) months ban as appropriate.

41. I do not impose a separate sentence on the more minor accreditation charge.
42. I invited Dragos to provide information as to his means, as it would be inappropriate to order a fine he cannot pay. He said:

“I am currently unemployed. I have an [REDACTED] old daughter. [REDACTED] and am expecting to pay around Euro [REDACTED] monthly [REDACTED]. I currently have around EUR [REDACTED] left as savings. “

43. Given that he will in effect be deprived of his livelihood, and his difficult financial position I will limit the accompanying fine to US \$2500.


Sanction: Patrick

44. Patrick’s fault lay in his loyalty to his brother. A ban is largely academic as he is not a professional tennis player or involved in the tennis circuit. It turned out not to be the birthday present he had hoped for. I regard his fault as much less serious and will impose a ban of two (2) years and six (6) months.
45. Given his lack of means, as he explained to me in his evidence, I do not intend to impose a fine on Patrick.

Disposition

46. I conclude that:
- a. Dragos is guilty of non-cooperation under F.2.b of the TACP.
 - b. The sanction will be a ban of four (4) years and six (6) months from Participation in any Sanctioned Event and a fine of US\$2500. Time spent under the Provisional Suspension (issued on 17 August 2023) will count towards this. The ban will end on 16 February 2028.
 - c. There will be no separate penalty for the accreditation charge under D.1.1.
 - d. Patrick is guilty of non-co-operation under F.2.b of the TACP.
 - e. The sanction will be a ban of two (2) years and six (6) months from Participation in any Sanctioned Event from the date when Patrick receives this decision.
 - f. All other charges against Dragos and Patrick are dismissed.
47. This Decision shall be publicly reported in full as prescribed in Section G.4.e. of the TACP.

48. This Decision is a final determination of the matter subject to a right of appeal to the Court of Arbitration for Sport (CAS) under Section I. 1 with a deadline under Section 1.4. of 20 Business Days from the date of receipt of the Decision by the appealing party.

A handwritten signature in black ink that reads "Charles Hollander". The signature is written in a cursive, slightly slanted style.

Charles Hollander KC

AHO

5 March 2024