Tribunal Arbitral du Sport
Court of Arbitration for Sport

ARBITRAL AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: **L. Yves Fortier, C.C., Q.C.**, Montréal, Canada

Arbitrators: **Hon. Justice Hugh L. Fraser**, Ottawa, Canada
Peter Leaver, Q.C., London, England
(hereinafter, the "Panel")

Ad hoc Clerk: **Stephen L. Drymer**, Esq., Montréal, Canada

in the appeal arbitration proceeding between

MR. KICKER VENCILL

4165 E. Thousand Oaks Blvd., Suite 355, Westlake Village, CA 91362, USA

Represented by **Howard L. Jacobs**, Esq., of the law firm Forgie Jacobs Leonard, 4165 E. Thousand Oaks Blvd., Suite 355, Westlake Village, CA 91362, USA

Appellant

– and –

UNITED STATES ANTI-DOPING AGENCY

2500 Tenderfoot Hill Street , Suite 200, Colorado Springs, CO 80906-7346, USA

Represented by **Travis T. Tygart**, Esq., Director of Legal Affairs, United States Anti-Doping Agency

and by **William Bock, III**, Esq., of the law firm Kroger, Gardis & Regas, LLP, 111 Monument Circle, Suite 900, Indianapolis, IN 46204-5125, USA

Respondent

Tribunal Arbitral du Sport
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***United States* Anti-Doping Agency**

Respondent

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I. FACTUAL BACKGROUND

A. The Parties

1. The Appellant, Kicker Vencill, is a competitive swimmer in the elite class category, resident in California, USA.

2. The Respondent, the United States Anti-Doping Agency ("USADA"), is the independent anti-doping agency for sport in the United States and is responsible for conducting drug testing and adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic Movement Testing (the "USADA Protocol").

3. Although not a party to these proceedings, it is noted that *La Fédération Internationale de Natation* ("FINA"), the body whose rules are at issue in these proceedings, is the international federation for the sport of swimming. FINA's Constitution recites as its objectives, *inter alia*, promoting the sport of swimming and providing a drug-free sport.[1]

B. Events Giving Rise to the Arbitration[2]

4. On January 21, 2003, Vencill provided an out-of-competition urine sample at the request of a USADA Doping Control Officer. The UCLA accredited laboratory (the "UCLA Lab"), which conducted the analysis of Mr. Vencill's sample, received the sample on January 22, 2003.

5. The results of the analysis of Appellant's "A" sample revealed, *inter alia*, the presence of "19-norandrosterone at a concentration greater than two nanograms per milliliter" of urine in each of three aliquots of the "A" sample on which the analyses were performed. Specifically, Mr. Vencill's "A" sample was found to contain approximately 4 ng/ml of 19-norandrosterone, approximately twice the 2 ng/ml permissible threshold for male athletes sanctioned by the IOC. Norandrosterone is a metabolite of nandrolone and/or its precursor,

1 FINA Constitution, C.S.1-2.

2 Other than as discussed in the following paragraphs, the Panel does not consider it necessary or useful to describe at length or pronounce upon the parties' divergent views regarding events preceding the decision from which the athlete appeals. Although the Panel has considered all of the factual allegations, legal arguments and evidence submitted by the parties in the present proceeding, it reviews herein only those submissions and proof in respect of which it considers it necessary to do so in order to explain its reasoning an award.

and as such is a prohibited substance under FINA Rules (see Part III below), notwithstanding that it is also produced in small amounts endogenously by both men and women.

6. The results of the analysis performed on Mr. Vencill's "A" sample were reported to USADA, which, by letter dated February 4, 2003, notified the athlete of the results and informed him that if he chose not to accept those results he had the right to request and observe an analysis of his "B" sample, which would take place at the UCLA Lab on February 18, 2003 at 9:00.

7. Mr. Vencill notified USADA of his desire to have his "B" sample analysed and, in the company of his representative and coach, David C. Salo, Ph.D., presented himself at the UCLA Lab at the appointed date and time. As matters transpired, the actual testing of the "B" sample did not take place until the afternoon of February 18, 2003. Mr. Vencill and his representative had left the lab before that testing occurred.

8. By letter dated February 26, 2003, USADA informed Mr. Vencill that the "B" sample analysis confirmed the positive "A" sample analysis previously reported by the UCLA Lab, and that the matter would thus be forwarded to a panel of the USADA Anti-Doping Review Board (the "USADA Review Board").

9. By letter dated March 24, 2003, the USADA Review Board recommended, *inter alia*, the imposition, in accordance with applicable FINA Rules, of a minimum four-year suspension effective from the date of collection of the athlete's sample as well as the retroactive cancellation of his competitive results as of the date six months prior to the collection of his sample. Mr. Vencill was further advised of his right to contest the recommendation of the USADA Review Board before an arbitral panel of the North American Court of Arbitration for Sport ("NACAS") in accordance with the USADA Protocol.

10. On April 3, 2003, Mr. Vencill informed USADA of his election to proceed to arbitration. A hearing before a NACAS arbitral panel took place on June 21 and 22, 2003, in Indianapolis, Indiana. On June 22, 2003, the NACAS arbitral panel issued a one and one-half page Interim Award, stating its conclusion that "a doping offence on the part of the Respondent, Mr. Vencill, has been committed in violation of FINA Rules DC 2.1" and suspending Mr. Vencill for a period of four years, effective January 21, 2003, being the date

on which his sample was collected. The arbitral panel's final "Arbitral Decision and Award" (the "NACAS Decision"), comprising its reasoned decision in the matter, was issued on July 24, 2003.

C. The Decision Appealed From

11. Among the athlete's arguments before the NACAS arbitral panel – and, as explained in Part IV below, the crux of his case in the present arbitration and, thus, the most pertinent for purposes of the present Award – was the following: that the doping charge against him should be dismissed because "[t]he supplements taken by [him] might have been contaminated. Such a finding would be consistent with the IOC funded study at the Cologne, Germany IOC Lab, indicating that a number of supplements not represented to contain nandrolone in fact do in sufficient quantity to cause a positive finding in a urine sample".[3]

12. In respect of this most crucial argument by the athlete and USADA's response thereto, the NACAS arbitral panel had this to say:

> **6.6** Claimant [USADA] clearly demonstrated to the panel's satisfaction that a prohibited substance was found in Respondent's test sample resulting in a doping offense within the meaning of FINA Rules DC 2.1 and 3.1. The extensive documentation it provided to Respondent demonstrates presumptively that the laboratory analysis was correctly conducted, that Respondent's urine specimen had not deteriorated or been contaminated and that the proper laboratory procedures had been followed. Moreover, in accordance with FINA Rule DC 8.3.2 the results of the UCLA Lab, an IOC accredited lab, are presumed to be scientifically correct, and the tests and analyses presumed to have been conducted in accordance with the highest scientific standards (see paragraph 2 above). Accordingly, USADA has met its burden of proving a doping offense was established from properly conducted testing and analyses of Respondent's urine sample by the accredited UCLA Lab.
>
> **6.7** It is incumbent, therefore, on the Respondent to rebut the FINA Rule DC 8.3.2 presumptions, and the FINA Rules by their terms limit the right to a hearing to those matters enumerated in DC 9.1.7 [which includes "whether a minimum sanction can be lessened in accordance with DC 9.10" (DC 9.1.7(e))]
>
> (...)

[3] NACAS Decision, para. 5.1.6; footnote omitted.

6.9 Respondent asserts that one or more of the supplements taken by him might have been contaminated. It is clear under the FINA Rules that the unwitting ingestion of a supplement which was contaminated with a prohibited substance is not a defense to a doping charge. Indeed, DC 2.4 provides that "[i]t is a competitor's duty to ensure that no prohibited substance enters or comes to be present in his/her body tissue or fluids. Competitors are responsible for any substance detected in samples given by them". Rather, the question of intent is relevant, if at all, to the issue of the extent of the sanction. (...)

(...)

7.4 Kicker Vencill is an intelligent, educated and articulate 24 year-old swimmer who has distinguished himself in competitive swimming beginning at a very young age. He testified that he qualified for the Pan Am Games to take place in August, 2003 and has aspirations to make the United States Olympic Team. He set up his own website listing his accomplishments and participated as a member of a task force to promote swimming at elementary schools and in his community. He considered himself a role model in the swimming community and is a member of USA Swimming and the National Team.

7.5 Respondent testified that there was widespread use of supplements by his swimming colleagues, noting that "a majority of post-graduates do some form of supplements." He testified that he had taken at various times the six supplements previously reported to USADA. He said he would keep bottles of supplements and discard them when he passed the urine tests. He said the supplement ZMA was recommended to him by a colleague, that he was introduced to other supplements and discovered some by his own research. He claimed never to have been told that supplements could be contaminated, that he never received at any of his e-mail addresses the numerous e-mails sent to him by U.S. Swimming and USADA, which contained information and warnings about supplement use, and that he had never visited USADA or IOC websites except to update his forms and information. On cross-examination, Respondent testified that he did not, until this proceeding, know that FINA has a zero tolerance policy for doping violations.

7.6 USADA presented at the hearings numerous exhibits of material sent to Respondent, and Stacy Michael of U.S. Swimming testified that none of the e-mails regarding possible supplements' contamination sent to Respondent were ever returned. On cross-examination Respondent said that other than some discussion with other swimmers and one or two calls to a doping hotline, he did nothing to investigate the supplements he took and did not read the various press releases issued on contamination of supplements.

7.7 Respondent's testimony that he had never been told or received any communication that supplements might not be contaminated is simply not credible. There was very extensive information either sent to him directly or available to him that should have alerted him to the risks of use of supplements that could result in a doping violation. Moreover, apart from the scholarly research on contaminated supplements, the UK

Sports Nandrolone Review issued in 2000, after noting that certain supplements contain compounds similar to nandrolene or its metabolic precursors, contained the following warnings:

> "*It may not be obvious from the label that such substances are present and are banned substances. Users of inadequately and incorrectly labelled products are at risk of unknowingly ingesting a banned substance. We therefore recommend that the sports community should be reminded they must maintain a high level of awareness of the possible hazards of using some nutritional supplements and herbal preparations.*"

We believe several warnings to this effect were both directly and indirectly communicated to the Respondent.

7.8 There is no evidence, nor do we have any reason to believe, that Respondent intentionally took supplements that were contaminated. We do believe, however, from the evidence presented that in using supplements and declining to test them Respondent failed to establish how the prohibited substance entered his body and his lack of negligence. Accordingly, he did not meet the standards required under DC 9.10 to justify a suspension lower than the minimum.

(...)

7.15 (...) In this case Respondent had the opportunity to test the supplements he used. He chose not to do so. While this does not manifest in itself an intention to use a prohibited substance, the failure to test his supplements, particularly when coupled with the numerous warnings sent to him or as to which he was put on notice, amount to a lack of compliance on his part that obviate a reduction of the suspension under the applicable rules.

II. PROCEEDINGS BEFORE THE CAS

A. Written Proceedings

13. The present arbitration was commenced by the filing of the Appellant's Statement of Appeal, with attached exhibits, on July 14, 2003 (the required CAS Court Office of CHF 500 was furnished a few days later), the whole in accordance with the provisions of Article R48 of the Code of Sports-related Arbitration (the "CAS Code"). In his Statement of Appeal, Mr. Vencill appointed the Hon. Justice Hugh L. Fraser as arbitrator.

14. On July 22, 2003, the athlete filed a request for an extension of time to file his Appeal Brief, on the ground that the NACAS arbitral panel had yet to render its final Decision and

Award, its Interim Award only having been issued on June 23, 2003. Mr. Vencill's request was granted by the CAS on July 23, 2003, which ordered that the time limit for the athlete to submit his Appeal Brief be extended to ten days after his receipt of the NACAS Decision.

15. The NACAS Decision was subsequently received by the athlete on July 25, 2003 and, on August 4, 2003, Mr. Vencill submitted his Appeal Brief in the arbitration, in accordance with the provisions of Article R51 of the CAS Code.

16. By letter dated July 24, 2003 addressed to the Secretary General of the CAS, USADA appointed the Hon. Michael Beloff, Q.C. as arbitrator. For various reasons (which need not be recited here) resulting in Mr. Beloff's unavailability to attend a hearing on the date eventually selected by the parties, USADA subsequently appointed Peter Leaver, QC, as its alternate arbitrator in replacement of Mr. Beloff.[4]

17. In accordance with Article R55 of the CAS Code, USADA filed its Answer to Appellant's Statement of Appeal on August 25, 2003.

18. In its Answer, among other submissions, Respondent requested that the Panel render three pre-hearing orders, to the effect: (1) that in his Appeal Brief Mr. Vencill admitted that he had committed a doping offense, such that the only issue in the arbitration concerned the applicable sanction; (2) that on the basis of the parties' written submissions a doping offence had been conclusively established; and (3) that Appellant be barred from raising issues and submitting evidence in the arbitration other than those submitted with his Appeal Brief. On September 11, 2003, the Appellant filed an Opposition to USADA's Request for Pre-Hearing Orders; this was followed by a Response to Appellant's Opposition, filed by USADA on September 23, 2003, and an Objection to USADA's Response filed by Mr. Vencill on the same date. By letter dated September 24, 2003, the CAS informed the parties of the decision of the President of the Panel, denying Respondent's requests for pre-hearing orders.[5]

[4] Letter dated September 11, 2003 from USADA to CAS regarding the appointment of Mr. Leaver; letter dated • from the CAS to the President of the Panel confirming Mr. Leaver's appointment,

[5] In the event, the parties' respective submissions dated September 23, 2003 (i.e., USADA's Response to Appellant's Opposition and Appellant's Objection to USADA's Response) were received by the CAS *after* transmittal of the latter's notice regarding the President's denial of Respondent's requests. As stated in a letter from the CAS to the parties dated September 29, 2003, "[t]hose submissions [of September 23, 2003] were not, in any event, authorized, and the parties are hereby advised that the decision of September 24, 2003, stands".

B. Order of Procedure

19. On September 1, 2003, the President of the Panel issued an Order of Procedure, setting out the jurisdiction of the CAS in the present arbitration, the constitution and mission of the Panel, the seat and language of the arbitration, as well as various further particulars concerning the conduct of the proceedings.

C. The Hearing

20. In accordance with the Order of Procedure, the hearing in this matter was held on November 10, 2003 in Denver, Colorado, at the offices of the American Arbitration Association.[6]

21. At the hearing, which began at 09:30 and continued until 21:45, the Panel heard the detailed submissions of counsel as well as the evidence of the following witnesses:[7]

- Mr. Kicker Vencill, who testified on his own behalf concerning his background and experience as an élite swimmer, his drug testing history and the circumstances surrounding the questions at issue in the arbitration;

- Dr. David Salo, Mr. Vencill's coach, who gave evidence on behalf of Mr. Vencill in particular as regards the athlete's background and experience, the use of dietary and nutritional supplements among elite athletes and the circumstances surrounding the events at issue in the arbitration;

- Dr. Timothy Robert of AEGIS Sciences Corp., who testified on behalf of Mr. Vencill concerning in particular the tests conducted by AEGIS Sciences Corp. on certain of Mr. Vencill's supplements, the results of which indicated contamination of Mr. Vencill's "Super Complete" supplements by three different anabolic agents;

[6] As confirmed in a letter addressed to the parties by the CAS dated November 7, 2003, at the request of the parties no court reporter was present at the hearing and the hearing was not recorded.

- Don H. Catlin, M.D., Director of the UCLA Lab, who gave evidence on behalf of Respondent regarding the analyses of Mr. Vencill's "A" and "B" samples performed by the UCLA Lab and the results of those analyses, as well as regarding the results of the analyses of the athlete's nutritional supplements performed by AEGIS Sciences Corp.;

- Larry D. Bowers, Ph.D., Senior Managing Director, Technical and Information Resources of USADA, who testified on behalf of Respondent concerning the reliability of the results of the analyses performed by AEGIS Sciences Corp. on behalf of Mr. Vencill.

22. At the conclusion of the hearing, and in response to the President's query, each party affirmed that it had received a full and fair hearing and that there were no additional matters that it wished to raise. The President then declared the proceeding closed.

D. The Parties' Submissions[8]

(i) The Appellant's Submissions

23. In his Appeal Brief, the athlete argued a number of issues in support of his appeal, ranging from questions concerning the chain of custody of Mr. Vencill's sample, alleged violations of Mr. Vencill's right to be present for the testing of his "B" sample, supposed inaccuracies in the results reported by the UCLA Lab and allegations to the effect that the low concentration of 19-norandrosterone found in the athlete's sample is consistent with endogenous production as opposed to exogenous administration or ingestion of a prohibited substance. However, as the arbitration proceeded and the parties' positions became increasingly refined, the importance of these matters to the Appellant's case diminished, such that they were not even argued at the hearing.

[7] With the consent of Respondent and of the Panel, the Appellant's witnesses Timothy Robert and David Salo were heard by telephone.

[8] In the following paragraphs, the Panel summarizes the principal points of fact and law raised by the parties in their written and oral submissions that it considers pertinent to an understanding of the issues addressed later in this Award. These summaries do not purport to comprise complete re-statements of the parties' positions in the arbitration. Additional references to the parties' positions, insofar as considered necessary or useful by the Panel, are also contained in Part IV, below.

24. Quite properly, in the view of the Tribunal, the Appellant chose, rather, to focus on the most plausible of his allegations, namely, that his positive test results were most likely caused by the consumption of nutritional supplements that, unknown to him, were contaminated with a number of prohibited substances. Specifically, Mr. Vencill alleges that subsequent to the NACAS Decision he had certain of the supplements that he was taking at the time of his doping control in January 2003 "tested for steroid contamination", and that those tests revealed that one of his supplements, a multi-vitamin/multi-mineral product called Ultimate Nutrition Super Complete Capsules ("Super Complete") was found to contain androstenediol, androstenedione and norandrostenedione in sufficient concentrations to have caused the positive doping result reported by the UCLA Lab. In fact, virtually the entirety of the evidence presented by the athlete at the hearing consisted of testimony – by the athlete himself, his coach and a representative of the laboratory which had been engaged to analyse Mr. Vencill's supplements – in support of the theory that the presence of a prohibited substance in Mr. Vencill's sample was caused by his unwitting ingestion of contaminated Super Complete multi-vitamins. On this basis, the Appellant argues, any sanction for a doping offense found to have been committed ought to be mitigated in the circumstances, in accordance with applicable FINA Rules.

(ii) The Respondent's Submissions

25. As Respondent notes in its answer, "[t]he only new argument and evidence raised in this appeal is the claim that Appellant has tested several of the numerous supplements he was taking at the time of his positive doping test and that one of those supplements was found to contain three anabolic agents ... set forth on the FINA Prohibited Substances List".[9] As to the significance of this argument, USADA's position is best summed up by Respondent itself in the following passages from its Answer:

> Despite Appellant's assertion to the contrary, this "new evidence" does not support a different result from that reached by the Initial CAS Panel [i.e., the NACAS arbitral panel]. Rather, Appellant's admission in his Appellant Brief that he used a supplement containing three banned anabolic steroids completely undercuts any legitimate challenge to the analysis of his urine sample by the UCLA Laboratory and to the chain of

[9] Respondent's Answer, p. 2.

> custody of the sample and renders moot any argument concerning Appellant's presence at the analysis of the "B" sample.
>
> (...)
>
> Appellant relies on his new supplement testing evidence to contend that his doping sanction should be reduced on the ground that he has purportedly conclusively established the cause of his positive drug test. Appellant is incorrect, however. While Appellant has now admitted that he ingested banned anabolic steroids, he has not proved that the contaminated supplement he has identified to this Panel was the sole cause of his positive doping test.
>
> (...)
>
> Moreover, to justify a reduction of the doping sanction to be applied for his steroid offense, Appellant is required to exclude the possibility that he negligently ingested a supplement containing a banned substance ... As numerous CAS panels have concluded, the fact that a supplement does not list a banned substance on the label of the supplement bottle does not make ingestion of that supplement not negligent ...
>
> (...) The amendment of FINA's Doping Control Rules means that the period of ineligibility that should be imposed for Appellant's doping offence is two years from the date of the hearing before the Initial CAS Panel in this matter, rather than four years from the date of the sample collection as originally determined by the Initial CAS Panel. Because Appellant was, at best, significantly negligent in committing a doping offence there should be no reduction in the two year period of ineligibility.[10]

III. THE FINA DOPING CONTROL RULES

26. Under the USADA Protocol, and as recognised and affirmed by both parties, the FINA Rules, including their provisions relating to prohibited substances, doping control, testing and sanctions, apply to the issues to be determined in the arbitration.

27. As the foregoing summaries of the parties' respective positions indicate, during approximately the same period in which the NACAS arbitral panel issued its Interim Award (June 23, 2003) and Mr. Vencill launched the present appeal arbitration proceeding (July 14, 2003) FINA amended certain of its Rules. Of particular relevance are the amendments relating to the elimination or reduction, in certain circumstances, of the sanctions imposed in cases of doping offenses.

28. As regards the significance of these amendments, the Appellant states as follows:

> On July 11, 2003, FINA adopted the new World Anti-Doping Code; and as a consequence, amended certain of its doping regulations ... Among those amendments are the following:
>
> 1. Reduction of the maximum suspension for a first time offence from 4 years to 2 years (see New Fina DC 10.2 ...);
>
> 2. New Provisions for the reduction of a sanction based on exceptional circumstances (see New FINA Rule 10.5 ...).
>
> Under the doctrine of *lex mitior*, if newly applicable sanctions are less severe than those existing at the time of the offense, the new sanctions are applicable. ... Therefore, the new FINA Rules are applicable to this case.[11]

29. For its part, the Respondent submits as follows as regards the applicability of the FINA Rules as amended: "Appellant contends, and USADA agrees, that Appellant is entitled to a hearing *de novo* before this Panel and that the recently revised sanction rules applicable under the newly amended FINA Doping Control Rules will apply in this proceeding."[12]

30. The Panel agrees with the parties. It is thus the FINA Rules, as amended, which apply.

31. The FINA Doping Control ("DC") Rules of particular relevance to this case are the following:

- **DC 2 ANTI-DOPING RULE VIOLATIONS**

  The following constitute anti-doping rule violations:

  DC 2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Competitor's bodily Specimen.

[10] Respondent's Answer, pp. 2-5.

[11] Appellant's Appeal Brief, pp. 16-17.

[12] Respondent's Answer, p.4. In footnote no. 4 to its Appeal Brief, the Respondent states: "the newly amended FINA Doping Control Rules do not go into effect until September 11, 2003, after the opportunity for comment by FINA membership. USADA's position in this regard is based on the assumption that the new Rules do, in fact, go into effect on September 11, 2003 and that the Panel's decision in this matter will postdate the adoption of the new Rules". Similarly, at footnote no.5, USADA declares: "the decision of the Initial CAS Panel imposing a 4 year suspension based on the then existing FINA rules was correct. However, those rules have now been changed. Where a sanction is reduced during the pendency of a doping proceeding it is accepted that the athlete is entitled to the benefit of the reduced sanction. ..." As stated by Respondent, and as (implicitly) assumed as well by Appellant, the amended FINA Rules did go into effect on September 11, 2003.

DC 2.1.1 It is each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body. Competitors are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Competitor's part be demonstrated in order to establish an anti-doping violation under DC 2.1.

DC 2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Competitor's Sample shall constitute an anti-doping rule violation.

DC 2.1.3 As an exception to the general rule of DC 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.

- **DC 4 THE PROHIBITED LIST**

DC 4.1 These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA. [The following passages are drawn from WADA's "2004 Prohibited List":]

PROHIBITED SUBSTANCES

(...)

S4. ANABOLIC AGENTS

Anabolic agents are prohibited.

1. Anabolic Androgenic Steroids (AAS)

a. Exogenous AAS including but not limited to:

androstadienone, ( ) **nandrolone, 19-norandrostenediol, 19-norandrostenedione** (...) and their analogues.

b. Endogenous AAS including but not limited to:

androstenediol, androstenedione, dehydropiandrosterone (DHEA), dihydrotestosterone, testosterone and their analogues.

Where a *Prohibited Substance* (as listed above) is capable of being produced by the body naturally, a *Sample* will be deemed to contain such *Prohibited Substance* where the concentration of the *Prohibited Substance* or its metabolites or markers and/or any other relevant ratio(s) in the *Athlete's Sample* so deviates from the range of values normally found in humans so as not to be consistent with normal endogenous production. A *Sample* shall not be deemed to contain a *Prohibited Substance* in any such case where the *Athlete* proves by evidence that the concentration of the *Prohibited Substance* or its metabolites or markers and/or the relevant ratio(s) in the *Athlete's Sample* is attributable to a pathological or physiological condition. In all cases, and at any concentration, the laboratory will report an adverse finding if, based on any reliable analytical method, it can show that the *Prohibited Substance* is of exogenous origin.

- **DC 10 SANCTIONS ON INDIVIDUALS**

(...)

DC 10.2 Except for the specified substances identified in DC 10.3, the period of Ineligibility imposed for a violation of DC 2.1. (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), DC 2.2 (*Use* or *Attempted Use* of *Prohibited Substance* or *Prohibited Method*) and DC 2.6 (*Possession* of *Prohibited Substances* and *Methods*) shall be:

First violation: Two (2) years' *Ineligibility*.

Second Violation: *Lifetime Ineligibility*

However, the *Competitor* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing this sanction as provided in DC 10.5.

(...)

DC 10.5 Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances.

DC 10.5.1 If the *Competitor* establishes in an individual case involving an anti-doping rule violation under DC 2.1 (presence of *Prohibited Substances* or its *Metabolites* or *Markers*) or *Use* of a *Prohibited Substance* or *Prohibited Method* under DC 2.2 that he or she bears *No Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in a *Competitor's Specimen* in violation of DC 2.1 (presence of *Prohibited Substance*), the *Competitor* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the event this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under DC 10.2, 10,3 and 10.6.

DC 10.5.2 This DC 10.5.2 applies only to anti-doping rule violations involving DC 2.1 (presence of Prohibited Substance or its Metabolites or Markers), Use of a Prohibited Substance or Prohibited Method under DC 2.2, failing to submit to Sample collection under DC 2.3, or administration of a Prohibited Substance or Prohibited Method under DC 2.8. If a Competitor establishes in an individual case involving that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may not be less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Specimen in violation of DC 2.1 (presence of Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

(...)

> **DC 10.8** The period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Competitor, the period of Ineligibility may start at an earlier date commencing as early as the date of Sample collection.

- **APPENDIX 1** [to FINA Rules]

> **DEFINITIONS APPLICABLE TO DOPING CONTROL RULES**
>
> (...)
>
> **No Fault or Negligence** The Competitor's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method.
>
> **No Significant Fault or Negligence** The Competitor's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.

32. In view of the fact that FINA Rules DC 10.5.1 and 10.5.2 are drawn directly from the World Anti-Doping Code (the "WADA Code"), and given the significance of those Rules to the essential matter at issue in the arbitration, the Panel considers it apposite to reproduce the following "comments" concerning Articles 10.5.1 and 10.5.2 of the WADA Code, set out in the Code itself:

> **10.5.1. Comment**: Article 10.5.1. applies only to violation under Articles 2.1 and 2.2 (presence and Use of Prohibited Substances) because fault or negligence is already required to establish an anti-doping rule violation under other anti-doping rules.

10.5.2. Comment: The trend in doping cases has been to recognize that there must be some opportunity in the course of the hearing process to consider the unique facts and circumstances of each particular case in imposing sanctions. This principle was accepted at the World Conference on Doping in Sport 1999 and was incorporated into the OMADC which provides that sanctions can be reduced in "exceptional circumstances." The Code also provides for the possible reduction or elimination of the period of ineligibility in the unique circumstances where the Athlete can establish that he or she had no Fault or Negligence, or no Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions: they are not applicable to the determination of whether an anti-doping rule violation has occurred.

Article 10.5 is meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5, an example where no Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example,

reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

(...)

IV. DETERMINATION

A. The Existence of a Doping Violation

33. Although, strictly speaking, two issues arise for determination by the Panel – namely, whether the athlete is guilty of a doping violation; and, if so, the sanction applicable in the circumstances – *in actuality, as discussed above, it is in respect of the question of the* applicable sanction that the parties adduced virtually the totality of their evidence and to which they directed their arguments during the hearing. This is not to say that the athlete formally admitted, or conceded, his guilt under applicable FINA Rules. He did not. However, in the view of the Panel, Mr. Vencill chose wisely to marshal his proof and arguments, in the circumstances, in support of his plea for the *elimination* or *reduction of the sanction* to be imposed in the event that the Panel were to find him guilty of a doping violation.

34. Indeed, the Panel finds that there is no question but that Mr. Vencill is guilty of a doping violation on substantially the same grounds and for the same reasons as articulated by the NACAS arbitral panel in its Decision and set forth by USADA in its Answer.

35. The Appellant adduced no evidence that would suggest that the chain of custody of his sample, from the time that it was collected to the time that it was analysed by the UCLA Lab, was anything other than intact; and at the hearing Mr. Vencill expressly stated that this was not contested. Nor does the Panel consider that the fact that the athlete's "B" sample was unsealed and tested at the UCLA Lab, not at 9:00 a.m. but later in the day, after Mr. Vencill and Dr. Salo had departed, in any way violated Mr. Vencill's right to be present at the testing (as set forth in Section 8.b of the USADA Protocol) or vitiates the results of the testing. As

stated by the NACAS arbitral panel, "it was their choice to leave. They were afforded the opportunity to stay as long as they wished until the testing was completed."[13]

36. As regard the findings of the UCLA Lab that Appellant's "A" and "B" samples revealed the presence of 19-norandrosterone, a prohibited substance, at a concentration in excess of the IOC-approved threshold of 2.0 ng/ml, here too the Panel agrees with and adopts as its own the reasoning and conclusion of the NACAS arbitral panel that:[14] "USADA has clearly demonstrated that a prohibited substance was found in Appellant's test sample, resulting in a doping offense within the meaning of FINA Rules DC 2.1 and 3.1." As to the claim by Mr. Vencill in his Appeal Brief that the results of the tests conducted by the UCLA Lab "should be viewed with distrust"[15], whether because the proper quantitative tests were not performed or because every single document requested by him may not have been provided to him by the UCLA Lab or USADA, or otherwise, the Panel need only note the almost total dearth of evidence adduced by the Appellant. In this regard, the NACAS arbitral panel found:

> The extensive documentation [USADA] provided to [the athlete] demonstrates presumptively that the laboratory analysis was correctly conducted, [the athlete's] urine specimen had not deteriorated or been contaminated and the proper laboratory procedures had been followed.
>
> Moreover, in accordance with FINA Rule DC 8.3.2 the results of the UCLA Lab, and IOC accredited lab, are presumed to be scientifically correct, and the tests and analyses presumed to have been conducted in accordance with the highest scientific standards ... Accordingly, USADA has met its burden of proving a doping offense was established from properly conducted testing and analyses of Respondent's urine sample by the accredited UCLA Lab.

37. The Panel agrees. Moreover, if there were any doubt in this respect, it was put to rest by the testimony of Dr. Catlin at the hearing, which the Panel found both credible and compelling and which was not seriously challenged by the athlete.

38. Appellants' claim that the minimal nandrolone metabolite levels found in his test samples are consistent with the possibility of endogenous production of nandrolone[16] is similarly rejected for his failure to cite any evidence whatsoever that would indicate or even

[13] NACAS Decision, para. 6.5.

[14] NACAS Decision, para. 6.6, reproduced above.

[15] *Appellant's Appeal Brief*, p. 11.

suggest the possibility that he naturally produced high levels of anabolic androgenic steroids, or that the level 19-norandrosterone detected in his sample was the result of endogenous production. Nothing more need be said on this.

39. In sum, the Panel unanimously finds that all of the elements of a doping violation have been proven by Respondent and that USADA has carried its burden of demonstrating that the athlete committed a doping violation within the meaning of the CAS Code and the FINA Rules.

B. The Appropriate Sanction

40. As already indicated, the crux of Mr. Vencill's submissions and evidence at the hearing was that the presence of a prohibited substance in his "A" and "B" samples was the result of his ingestion of Super Complete capsules, a common multi-vitamin, which, unknown to him at the time (though later proved by laboratory analysis), was contaminated with androstenediol, androstenedione and norandrostenedione. In this regard, and specifically with respect to the appropriate sanction in the event that he is found to have committed a doping violation, the Appellant pleads as follows:

> Kicker Vencill has definitively established that the Ultimate Nutrition Super Complete Capsules that he was taking on January 21, 2003 were contaminated with steroids; as such he has met the second prong of new FINA Rule DC 10.5. Furthermore, it is submitted that the contamination in the supplement got there through no fault or negligence on the part of Kicker Vencill, such that the period of ineligibility should be eliminated under new FINA Rule DC 10.5.1. In the alternative, it is submitted that Kicker Vencill bore no significant fault or negligence for the contaminated supplement and for the allegedly positive drug test, such that the applicable two-year suspension should be reduced to one year.[17]

41. As regards the date at which any ineligibility (if ordered by the Panel) should start to run, Mr. Vencill's very able counsel, in his closing submissions at the hearing, argued that as the NACAS Decision imposed a suspension as of the date of collection of Mr. Vencill's sample (January 21, 2003), fairness dictates that any ineligibility ordered by this Panel should also start on that date.

[16] See pp. 11 *et seq.* of Appellant's Appeal Brief.

[17] Appellant's Appeal Brief, pp. 17-18. Emphasis added.

42. USADA's view, as expressed by Dr. Bowers during his cross-examination by Appellant's counsel, is that Mr. Vencill should receive the maximum suspension, just as in any case of what Dr. Bowers called "intentional doping". As argued by Respondent's counsel in closing, the evidence shows that the presence of a prohibited substance in the athlete's urine was caused by his ingestion of a prohibited substance – whether in a vitamin, a supplement or otherwise – for which the athlete bears complete responsibility. In USADA's submission, the Panel should impose "a sanction consistent with the fair and uniform application of the FINA Doping Control Rules, which in this case is a two-year period of ineligibility to be applied from June 22, 2003 the date of the conclusion of the initial hearing in this case"[18].

43. Three questions must be answered in order to determine the appropriate sanction applicable in this case. First, whether Mr. Vencill has established that he bears what the FINA Rules refer to as "no fault or negligence" for the doping violation of which he has been found guilty. Second, if the answer to that question is no, whether Mr. Vencill has established that he bears "no significant fault or negligence" for the violation. Third, again assuming that the answer to the first question is no *and* that the athlete is liable for either a full or reduced period of ineligibility, at what date does the ineligibility start?

44. In respect of the first question, concerning Mr. Vencill's suggestion that his period of ineligibility should be eliminated in accordance with FINA Rule DC 10.5.1 on the ground that he bears "no fault or negligence" for his doping violation, the Panel is of the view that the athlete's claim bears not the slightest scrutiny.

45. For the reasons set out below, the Panel considers it unnecessary to refer in any detail to the evidence and argument presented by the parties concerning whether or not the Super Complete capsules that Mr. Vencill had tested in July 2003 were in fact consumed by him at the time of his doping control and whether they were the sole cause of the positive results reported by the UCLA Lab. Suffice it to say that the athlete contends that this is the case, while USADA maintains, *inter alia,* that the Appellant has *not* definitively established either how the prohibited substance in question entered his system or that it did so without any fault or negligence (or significant fault or negligence) on his part.

[18] USADA's Answer, p. 31

46. In closing argument, counsel for the Appellant focused on the commentary on Articles 10.5.1 and 10.5.2 of the WADA Code from which FINA Rules DC 10.5.1 and 10.5.2 are drawn (in almost identical terms). Counsel drew the Panel's attention in particular to an illustration in the commentary concerning application of the "no significant fault or negligence" standard (to which we return later in the present Award). However, other elements of the commentary are at least equally enlightening, particularly so in respect of the defence of "*no* fault or negligence".

47. To begin, the commentary makes clear that rules relating to the mitigation of mandatory sanctions are "meant to have an impact *only in cases where the circumstances are truly exceptional* and not in the vast majority of cases".[19] More to the point, the commentary states explicitly that a mandatory sanction could not be eliminated on the basis of "no fault or negligence" in the circumstances of "a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement". The commentary goes on to explain that "Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination".

48. The circumstances of the present case are identical to those envisaged in the commentary on the WADA Code. On this basis alone, the Appellant's claim for the elimination of his sanction would fail. Moreover the definition of "no fault or negligence" contained in Appendix I to the FINA Rules entails the athlete "establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited Method". As discussed below, although the Panel is satisfied that the athlete did not "know or suspect" that his supplements were contaminated, we do not believe that he "could not reasonably have known or suspected" that this was so. Further, he exercised not the slightest caution in the circumstances Indeed, the weakness of this aspect of the athlete's defence was apparently recognised by Mr. Vencill himself, given that the force of his counsel's arguments was directed not at the elimination of his sanction but, rather, its reduction in accordance with the provisions of FINA Rule DC 10.5.2. In fact, the Panel need not consider the matter further, given its finding, explained below, in respect of the athlete's

[19] Emphasis added. The commentary is reproduced in Part III of this Award.

claims based on FINA Rule DC 10.5.2. It is thus to a consideration of those claims that we now turn.

49. As mentioned, in his closing submissions counsel for Mr. Vencill referred the Panel to the commentary regarding Article 10.5.2 of the WADA Code (reproduced in Part III, above) in which it is stated:

> [R]eduction may well be appropriate in illustration (a) [a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement] if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the *Athlete exercised care in not taking other nutritional supplements.*

50. The Appellant argued that FINA Rule DC 10.5.2, which is based squarely on Article 10.5.2 of the WADA Code, "would mean nothing if proof of a contaminated supplement has no effect on the sanction". He further maintained that " 'no significant fault or negligence' was meant to deal with just this situation – a common multi-vitamin taken over a number of years [by Mr. Vencill] with no positive tests".

51. The Appellant also laid particular emphasis on a press release issued by USADA on October 16, 2003 (filed by the athlete as an exhibit at the hearing) concerning the designer steroid known as "THG", in which USADA declares that "international doping" by means of THG "is a far cry from athletes accidentally testing positive as a result of taking contaminated nutritional supplements."

52. For its part, USADA submitted, as already explained, that this case is to be regarded as no different from any other instance of "intentional doping" for which no reduction of the mandatory two-year sanction applies.

53. For the reasons set out below, the Panel finds that Mr. Vencill has indeed failed to establish that he bears what FINA Rule DC 10.5.2 refers to as "no significant fault or negligence" in relation to the doping violation which he has been found to have committed. His claim for a reduction of sanction is thus denied.

54. A brief word concerning the athlete's use of nutritional supplements is in order. According to Mr. Vencill, he has long used a variety of such supplements, including the Super

Complete supplement that he claims is the cause of his positive test. He claims never to have intentionally ingested or administered a prohibited substance; and it is clear that prior to the test at issue in this case he never tested positive for a prohibited substance.

55. The Panel accepts Mr. Vencill's evidence in respect of these matters. Specifically, having considered all of the evidence adduced by the parties, on balance the Panel accepts that: the results of the laboratory analyses conducted on behalf of the athlete in July 2003 revealed the presence of banned steroids in his Super Complete capsules that were tested; such contamination was unknown to the athlete; the athlete was in fact taking such capsules on January 21, 2003; and the cause of the athlete's positive test was his ingestion of those capsules.

56. Where the Panel does not accept the Appellant's submissions, and unequivocally finds against him, is in relation to his claim that he bears "no significant fault or negligence" in the circumstances.

57. We begin with the basic principle, so critical to anti-doping efforts in international sport and enunciated clearly in FINA Rule DC 2.1.1, that "[i]t is each Competitor's personal duty to ensure that no Prohibited Substance enters his or her body" and that "Competitors are responsible for and Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens". The essential question is whether Mr. Vencill has lived up to this duty. We find that he has not.

58. The Panel notes, without further comment, that the athlete's testimony during the present appeal arbitration proceeding differed in one important aspect from his evidence before the NACAS arbitral panel. Whereas previously Mr. Vencill claimed that he "had never been told or received any communication that supplements might be contaminated" – a claim which the NACAS panel dismissed for being "simply not credible"[20] – at the hearing in this arbitration the Appellant conceded, very appropriately in the view of the Panel, that prior to his positive test he was in fact aware of the existence (though he claimed not to recall the source) of warnings regarding the risk of contamination of vitamins and supplements.

[20] See Part I.C, above.

59. The Panel also notes the athlete's admission that, despite such knowledge, at the time of his positive test he was taking a variety of nutritional supplements and multi-vitamins – many of which were apparently recommended to him by fellow swimmers, including teammates – that he never discussed with his parents, coach or doctor, never researched on his own and never had tested until July 2003.

60. Finally, the Panel notes the abundant, uncontroverted evidence adduced by USADA regarding the numerous, widely disseminated warnings as to the risk of contamination of vitamins and supplements. This includes extensive evidence of warnings, notices and advisories published both in print and on-line, some of which were actually sent to Mr. Vencill, as well as presentations made to competitors at events in which Mr. Vencill participated – all of which were directed specifically at swimmers such as Mr. Vencill though none of which he claims specifically to "recall", notwithstanding his admitted awareness of their general substance, namely, the risk of contamination.

61. In its Decision, the NACAS arbitral panel determined, *inter alia*, and the Panel as well finds, on the evidence before it, that:

- There was very extensive information either sent to the Appellant directly or otherwise available to him that should have alerted him to the fact that use of supplements could result in a doping violation;

- Although Mr. Vencill has demonstrated that he did not intentionally ingest contaminated supplements, by using supplements while failing to make even the most rudimentary inquiry into their nature, let alone test them to ensure that they were free from contamination, the athlete does not meet the well-established standards required to justify a reduction of his sanction;

- The failure to test his supplements or seemingly to exercise the slightest caution in this regard, coupled with the numerous warnings sent to him or as to which he was effectively put on notice, amount to a lack of compliance on his part that obviate a reduction of his period of ineligibility under the applicable FINA Rules.

62. Indeed, the Panel finds that Appellant's conduct in the circumstances amounts to a total disregard of his positive duty to ensure that no prohibited substance enters his body. Without wishing to attribute any particular motivation to Mr. Vencill in this case, we hold that for an athlete in this day and age to rely – as this athlete claims he did – on the advice of friends and on product labels when deciding to use supplements and vitamins, is tantamount to a type of wilful blindness for which he must be held responsible. This "see no evil, hear no evil, speak no evil" attitude in the face of what rightly has been called the scourge of doping in sport – this failure to exercise the slightest caution in the circumstances – is not only unacceptable and to be condemned, it is a far cry from the attitude and conduct expected of an athlete seeking the mitigation of his sanction for a doping violation under applicable FINA Rules.

63. We hold that the athlete's "fault or negligence" in the circumstances is exceptionally "significant" in relation to the doping violation of which he has been found guilty. He is thus liable for the full two-year period of ineligibility provided under FINA Rule DC 10.2.

64. The only question remaining to be determined is the date at which that period of ineligibility commences. The relevant FINA Rule is DC 10.8, which states that ineligibility "shall start on the date of the hearing decision providing for Ineligibility" save that any period of provisional suspension "shall be credited against the total period of Ineligibility to be served". Mr. Vencill was provisionally suspended from competition as of May 22, 2003. The Interim Award of the NACAS arbitral panel was issued on June 22, 2003. Accordingly, the Appellant is to be declared ineligible for competition as of May 22, 2003.

65. The Panel notes that FINA Rule DC 10.8 also provides that "[w]here required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Competitor", the period of ineligibility "may start at an earlier date". We find no such "delays" in the circumstances or indeed any basis for a claim that fairness requires a change to the otherwise mandatory starting date of the Appellant's period of ineligibility.

V. COSTS

66. The decision as to the costs of the arbitration is based on Article R65 of the CAS Code.

67. As provided in Article R65.1 of the CAS Code, the fees and costs of the arbitrators and the costs of the CAS are borne by the CAS. The CAS Court Office fee of CHF 500.-, paid by the IAAF upon filing the Statement of Appeal, shall be kept by CAS in accordance with Article R65.2 of the CAS Code.

68. Pursuant to Art. R65.3 of the CAS Code, the parties are required to advance their own costs as well as the costs of any experts, witnesses and interpreters. It is then up to the Panel to decide which party ultimately shall bear such costs. In so deciding, the Panel must take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties. Having considered the factors set out in Article R65.3 of the CAS Code, and in the light of all of the circumstances, the Panel is unanimously of the view that it is reasonable for each party to bear its own costs and expenses incurred in connection with this appeal arbitration procedure.

VI. AWARD

69. For all of the foregoing reasons, **the Court of Arbitration for Sport hereby rules:**[21]

1. The jurisdiction of the CAS is affirmed;
2. The appeal filed by Mr. Vencill on 14 July 2003 is dismissed;
3. Save for the applicable period of ineligibility as specified in paragraph 4 below, the decision in this matter issued by the North American Court of Arbitration for Sport Panel dated 23 June 2003 is upheld;
4. Kicker Vencill shall be declared ineligible for competition for two years commencing as of 22 May 2003;
5. The Court Office fee of CHF 500 already paid by Mr. Vencill shall be retained by the CAS;
6. Each party shall bear its own costs.

Lausanne, 11 March 2004

THE COURT OF ARBITRATION FOR SPORT

[21] The following award was notified to the parties by the CAS on 18 November 2003, without reasons.