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Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Matthew Timothy Bouldin
(born 17 January 1988)

hereafter:
(“the Player”)

(Nationality: U.S.A)

Whereas, the Player underwent a doping test organised by the Hellenic NADO on 17 December 2010 in Athens, Greece;

Whereas, the analysis of the Player's sample (No. 1922869) was conducted at the WADA-accredited Doping Control Laboratory of Athens, Greece (“Laboratory”), and on 20 January 2011 the analysis showed the presence of the prohibited substance Methylhexaneamine in the Player’s sample;

Whereas, the Player did not request the analysis of the B sample;

Whereas, on 17 February 2011 the One-Member Judicial Panel of the Hellenic Basketball League (“HEBA Judge”) imposed on the Player a suspension of 1 year;

Whereas, on 22 March 2011 and following an appeal by the Player, the Greek Supreme Council for the Resolution of Sports Disputes (“ASEAD”) confirmed the 1-year suspension, starting from 17 December 2010;

Whereas, between 4 March 2011 and 18 April 2011 the Player played for the Tulsa 66ers of the NBA Development League (“NBADL”);

Whereas, on 15 June 2011 the German Basketball Federation requested a letter of clearance from the NBADL indicating that the Player wishes to play for the club EnBW Ludwigsburg;

Whereas, on 28 June 2011 the Player’s representative forwarded to FIBA the file of the case as submitted to the Greek adjudicating bodies and requested that FIBA intervene in this matter and impose a sanction shorter than that imposed by the ASEAD;

Whereas, by letter dated 14 July 2011 FIBA informed the Player that, in accordance with article 13.7 of the FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”), the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon the Player for the purposes of FIBA competitions. In the same letter, the Player was informed about his right to be heard either in person or by telephone conference on 4 August 2011;

Whereas, by e-mail dated 18 July 2011 the Player informed FIBA that he opted to be heard by telephone conference;

Whereas, on 4 August 2011 the Player – assisted by his representative Mr. Stu Lash – was heard via telephone conference by a FIBA Disciplinary Panel composed of Ms. Eleonora Rangelova,

member of FIBA's Legal Commission and of Dr. Heinz Günter, President of FIBA's Medical Commission; Ms. Virginie Alberto, FIBA Anti-Doping Officer, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Dr. Dirk-Reiner Martens, FIBA Legal Advisor, were in attendance;

Whereas, in his written statement and at the hearing the Player:

- submitted that prior to the doping control he had consumed the supplement Oxyelite which was brought to him in Greece by his girlfriend. He had been using similar weight-loss supplements while playing in the NCAA without ever having failed a doping test;
- submitted that at the time of the control he was not aware that the above-mentioned supplement contained a prohibited substance and that he had no intention to enhance his performance;
- admitted to have made a big mistake by not researching the label of the product;
- stated that, although he has not received any anti-doping education, he was aware that the doping test system in Europe would be somewhat different than in the NCAA but did not check in detail before coming to Greece;
- submitted that only a few days after his positive result was announced FIBA issued a circular regarding the presence of methylhexaneamine in several supplements, either listed on the product label with a different name (geranium, dimethylamylamine) or not at all;
- acknowledged that he is responsible for the anti-doping rule violation, expressed his regret and apologised for the positive finding and stated that because of the suspension he lost his contract with the Greek club Iraklis;
- stated that he has no contract secured in Europe currently because he is waiting for the FIBA decision on his suspension but has an offer from Ludwigsburg;
- asserted that this was his first anti-doping rule violation.

Now, therefore, the Panel takes the following:



DECISION

A period of 6 (six) months' ineligibility, i.e. from 19 April 2011 to 18 October 2011, is imposed on Mr. Matthew Timothy Bouldin.

Reasons:

1. The Panel shall first deal with the issue of applicable regulations. In compliance with the World Anti-Doping Code (“WADC”) and the FIBA ADR, FIBA has endorsed the WADA 2011 Prohibited List (the “New List”) which has substituted the WADA 2010 Prohibited List (the “Old List”). The New List entered into force on 1 January 2011.
2. Article 16.6 of the FIBA ADR reads as follows:

“16.6 These Anti-Doping Rules shall come into full force and effect on 1 January 2009 (the “Effective Date”). They shall not apply retrospectively to matters pending before the Effective Date; provided, however, that:

16.6.1 Any case pending prior to the Effective Date, or brought after the Effective Date based on an anti-doping rule violation that occurred prior to the Effective Date, shall be governed by the predecessor to these Anti-Doping Rules in force at the time of the anti-doping rule violation, subject to any application of the principle of lex mitior by the hearing panel determining the case.”

(emphasis added by the Panel)

Besides this mention in the FIBA ADR and in Article 25 of the WADC, the application of the principle of *lex mitior* in doping cases has also been established by the Court of Arbitration for Sport (“CAS”):

“This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the

body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions assumed to be less severe, even when the events in question occurred before they came into force.”

[CAS Advisory Opinion 94/128 (UCI and CONI), CAS Digest I, p.509]

3. Article 4.4.2 of the FIBA ADR provides:

“4.2.2 Specified Substances

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.”

4. Further, Article 10.4 of the FIBA ADR provides:

“Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the use of a performance enhancing substance. The Player or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

5. It is evident that, although the FIBA ADR have not been amended in 2011, the classification of stimulants into specified or non-specified (as referred to in Article 4.4.2.b of the FIBA ADR) depends exclusively on the prohibited list, as annually updated by WADA. Further, Article 4.4.2 is linked to Article 10.4, which provides that the applicable period of ineligibility for cases where a specified substance was present in a player’s body is different (ranging from a reprimand to two years) than the period of ineligibility for non-specified substances (two years). The Panel thus concludes that the New List, as

incorporated by the FIBA ADR, clearly qualifies as *lex mitior* since it allows for a sanction of less than two years to be imposed, without seeking recourse to Article 10.5 [No (significant) Fault or Negligence].

6. In the present case, the Player committed an anti-doping rule violation since the prohibited substance Methylhexaneamine was found in his urine sample. This fact remained uncontested.
7. The Player's sample was taken on 17 December 2010, when the Old List was still applicable. Under letter S.6 of the Old List, methylhexaneamine was a non-specified stimulant. On the other hand, the New List provides:

“All Prohibited Substances shall be considered as “Specified Substances” except Substances in classes S1, S2.1 to S2.5, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3. [...]

S6. Stimulants include [...] b: Specified Stimulants [...] methylhexaneamine (dimethylpentylamine) [...]”

Consequently, methylhexaneamine is considered a specified substance under the New List.

8. In this respect, in application of the general principle of *lex mitior* and of Article 16.6 of the FIBA ADR *mutatis mutandis*, the Panel is of the opinion that the New List shall apply in the present case and methylhexaneamine shall be treated as a specified substance.
9. Furthermore, the Panel notes that the Player openly spoke about the supplement he was using, which his girlfriend had bought in the US, and that he had no idea whatsoever regarding the dangers involved in the use of supplements. The Panel notes that the Player's position has been consistent throughout the process before the Greek adjudicating bodies and before FIBA. In addition, the Player's version of the facts is confirmed by the written statements dated 11 March 2011 of Mr. Vladimir Stergiou, player of Iraklis BC, and Dr. Georgios Petalotidis, team doctor of Iraklis BC.

10. On the other hand, the Player should be aware when signing with a FIBA team that the WADA Prohibited List applies to the all competitions authorised by FIBA and its national member federations. In addition, although FIBA's circular regarding methylhexaneamine was issued after his doping control; he should have been acquainted with numerous anti-doping warnings regarding supplements. Simply buying an over-the-counter supplement in the US and using it during the season without even checking its contents or consulting with the team doctor is not a responsible behaviour. The Panel thus finds that the Player was far from exercising utmost caution in taking the supplement while not being absolutely confident about its ingredients and without ensuring that it does not contain a prohibited substance. A simple internet research would have revealed that the supplement Oxyelite contains dimethylamylamine (<http://www.bodybuilding.com/store/usp/oxyelite-pro.html>) and the latter is another name for the prohibited substance methylhexaneamine (<http://en.wikipedia.org/wiki/Methylhexanamine>).
11. In view of the circumstances of this case, the Panel's jurisprudence in similar cases (see decision dated 17 February 2011 in the matter Salenga and decision dated 31 March 2011 in the matter Weeden) and the Player's degree of fault, the Panel decides that it is appropriate to impose a sanction of six (6) months on him.
12. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start the day after the Player's last official game in the NBADL, i.e. on 19 April 2011, given that he has not participated in any competitions since that date.
13. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 11 August 2011

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On behalf of the FIBA Disciplinary Panel

Eleonora Rangelova

President of the Disciplinary Panel