BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND **ST 17/10**

BETWEEN	**DRUG FREE SPORT NEW ZEALAND**
	Applicant
AND	**RODNEY NEWMAN**
	Respondent
AND	**NEW ZEALAND POWER LIFTING FEDERATION INC**
	Interested Party

DECISION OF TRIBUNAL
Dated 31 January 2012

Hearing Date:	16 January 2012
Tribunal:	Barry Paterson QC (Chairman) Sir Bruce Robertson Anna Richards
Registrar:	Brent Ellis
Counsel:	Paul David and Isaac Hikaka for Applicant
Other Participants:	Rodney Newman, Respondent Steve Lousich for Interested Party (by conference phone) Graeme Steel and Jayne Kernohan of Applicant

Introduction

1. This application, alleging anti-doping rule violations by Mr Newman, was filed on 16 August 2010. Initially, Mr Newman did not file a notice of defence but did so on 22 September 2010, after being advised of the need to do so if he wished to take any steps in the proceeding.

2. The matter was set down for hearing on 26 October 2010 but was adjourned when proceedings, under the Medicine Act 1981, were instituted in the District Court by the Ministry of Health against Mr Newman in respect of some of the allegations which are included in the application in this proceeding.

3. The Tribunal, at Mr Newman's request, agreed to delay the hearing of this application until the District Court matter was resolved. He was, on 12 October 2010, provisionally suspended by the Tribunal in accordance with the provisions of r.12 of the Sports Anti-Doping Rules (**SADR**) 2010.

4. The District Court proceeding was determined in substance when judgment was given against Mr Newman on 6 December 2011. Mr Newman has yet to be sentenced in the District Court.

5. This is the second time in which Mr Newman has appeared before the Tribunal for breaches of the SADR or its predecessor. He appeared before the Tribunal in October 2008, after returning a positive test to Boldenone and Testosterone, both prohibited substances, which were present in the sample taken from him at the North Island Power Lifting Championships on 21 June 2008. In a decision of the Tribunal given on 5 November 2008, he was declared to be ineligible, as defined by r.14.9 of the SADR in force at the time, for a two year period commencing on 22 July 2008. He was subject to that sanction at the time of some of the violations alleged in this application. Other alleged violations predate the date in which the period of ineligibility began.

Alleged Violations

6. In the application, Drug Free Sport New Zealand (**DFS**) alleges that the following anti-doping violations were committed:

   (a) Between 22 March and 8 May 2010 Rodney Newman participated in sporting activity in breach of the prohibition under the period of ineligibility imposed by the Tribunal on 5 November 2008 (SADR 14.10.1).

   (b) On 18 May 2010 Rodney Newman failed to submit to sample collection without compelling justification after notification (SADR 3.3).

   (c) At various times between 27 October 2006 and 1 October 2009, Rodney Newman used or attempted to use prohibited substances (SADR 3.2).

   (d) On 1 October 2009, Rodney Newman was in possession of prohibited substances namely Clenbuterol, Mesterolone, Metandienenone, Stanozolol, Testosterone, Oxymetholone, Trenbolone, Letrozole, Metandienone, Oxandrolone, Prasterone and Tadalafil (SADR 3.6).

   (e) At various times between 27 October 2006 and 1 October 2009, Rodney Newman was in possession of prohibited substances.

The Coaching Allegation

7. The allegation that Mr Newman participated in sporting activity in breach of the sanction imposed by the Tribunal in its decision of 5 November 2008 covers the period from 22 March to 8 May 2010. The evidence provided by DFS, and not contested by Mr Newman, was that at the Auckland Power Lifting Championships on 8 May 2010 Mr Newman gave advice to competitors, assisted competitors with equipment and warm-ups and assisted competitors in their discussions with judges. The allegation is that these are typical activities conducted by coaches during the power lifting competition. Three competitors chosen for random drug testing on that day listed Mr Newman as their coach on their doping control forms.

8. While Mr Newman acknowledged he had carried out these activities, there was a suggestion in his evidence and in his cross-examination of Messrs Steel and Lousich that his conduct may have been condoned by New Zealand Power Lifting (**PLNZ**) and that DFS may have known about his activities before they employed an investigator to provide evidence. The Tribunal finds no reason to criticise the conduct of DFS in this matter and makes no finding that PLNZ condoned Mr Newman's activities. If they had done, it would have been irrelevant to the allegation.

9. A witness statement was provided by Ms Smits as to the activities undertaken by Mr Newman on 8 May 2011. She was not required for cross-examination and the Tribunal accepts that Mr Newman carried out the activities alleged by DFS.

10. The relevant rule at the time of Mr Newman's suspension in November 2008 provided that an athlete who has been declared ineligible under the SADR may not "during the period of *Ineligibility,* participate in any capacity in any *NOC Team* or *National Sporting Team*, *Competition*, *Event,* or activity, whether local or national (other than authorised anti-doping education or rehabilitation programs) organised, authorised or sanctioned by, any *Signatory* or *Signatory's* member organisations or any *National Sporting Organisation* (whether a member of a *Signatory* or not) or any member organisations or *Persons,* or organisation in any way connected with a *National Sporting Organisation".* While the wording, and numbering, of the rule has since changed its effect is unaltered.

11. The activities undertaken by Mr Newman on 8 May 2010 clearly fall within the ambit of the relevant rule. He was participating as a coach in a competition or activity at the Auckland Championships and as such his activities fall within the phrase "participate in <u>any</u> capacity". [emphasis added] On 8 May 2010, Mr Newman was still subject to the period of Ineligibility referred

to above. Mr Newman committed a violation under the relevant rule on that date.

12. While there was no direct evidence of Mr Newman participating as coach before 8 May 2010, the nature of his involvement on 8 May 2010 suggests he did. It is, however, not necessary to make a finding on participation prior to 8 May 2010, as his activities on that date are sufficient for the Tribunal to make a finding that Mr Newman committed a violation of r.14.10.1 (the relevant rule concerning ineligibility) on that date.

Refusal to submit to sample collection after notification

13. The allegation is that on 18 May 2010 Mr Newman was requested to provide a sample but refused to do so and did not have justification for such refusal. An evidence statement provided by DFS is evidence of this fact.

14. Mr Newman has never denied that he refused to give the sample when requested. He did suggest prior to the hearing that he may not have been required to do so because he had retired from power lifting.

15. At the hearing, Mr Newman admitted this violation when shown his registration form and his "athlete acknowledgment and agreement" form, both of which were signed and dated 4 April 2008. In the athlete acknowledgment and agreement form he acknowledged that he remained subject to the SADR until such time as he ceased to be a member of PLNZ and gave written notice to that effect to PLNZ. No such notice was ever given.

16. This violation has been established to the comfortable satisfaction of the Tribunal.

Possession Allegations

17. There are two allegations of possessing prohibited substances and it is convenient to consider these together and before consideration is given to the use allegation.

18. Mr Newman admitted the possession charges, although in his view the lists of Prohibited Drugs referred to both in DFS's application and in the District Court proceedings were not completely accurate. Nothing turns on any minor discrepancy. Mr Newman admits possession of a substantial number of the prohibited substances at the relevant times.

19. In respect of the allegation of possession of prohibited substances on 1 October 2009, DFS relied upon a detailed brief of evidence submitted by Ms Squire, a Medsafe senior investigator, and the decision of the District Court dated 6 December 2011. Ms Squire gave similar evidence in that proceeding. Under r.4.2.3 of SADR, the findings of the District Court "shall be irrebuttable evidence against the *Athlete…* to whom the decision pertained of those facts unless the *Athlete…* establishes that the decision violated principles of natural justice." There is no suggestion that the decision violated such principles.

20. The District Court found that the Crown had proved beyond reasonable doubt that Mr Newman imported the prescription medicines as charged and had in his possession other prescription medicines as charged. The drugs imported were Clenbuterol, Mesterolone, Methandienone, Stanozolol, Testosterone and Oxymetholone.

21. The drugs which Mr Newman had in his possession were Testosterone, Mesterolone, Methandienone, Oxandrolone, Prasterone and Stanozolol.

22. In respect of the possession allegations, it is not necessary to consider in detail the District Court judgment or the evidence of

Ms Squire, as Mr Newman has accepted that the violations have been established. It is sufficient to say that the Tribunal accepts from the evidence of Ms Squire and the District Court decision that the possession allegations are proved to the Tribunal's comfortable satisfaction. It will be necessary to refer to some of the evidence of Ms Squire when considering the use allegation.

23. Mr Newman also accepts that the violation alleging that he had prohibited substances in his possession at various times between 27 October 2006 and 1 October 2009 is also correct. The evidence of Ms Squire, referred to below, also establishes this violation.

The Use Allegation

24. While Mr Newman accepted that the other alleged violations had been established, he denied use or attempted use of prohibited substances. The allegation is that at various times between 27 October 2006 and 1 October 2009 Mr Newman used or attempted to use prohibited substances.

25. The relevant rule is r.3.2 of the SADR which reads:

> Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method
>
> 3.2.1 It is each *Athlete's* personal duty to ensure that no Prohibited Substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the Athlete's part be demonstrated in order to establish an *Anti-Doping Rule Violation* for *Use* of a *Prohibited Substance* or a *Prohibited Method*.
>
> 3.2.2 The success or failure of the *Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an *Anti-Doping Rule Violation* to be committed.

26. There was no evidence adduced of Mr Newman having been seen taking any of the prohibited substances. The evidence upon which DFS relies is:

(a) The large number of prohibited substances found at Mr Newman's home.

(b) The large number of prohibited substances seized by Customs in parcels addressed to Mr Newman.

(c) Statements made by Mr Newman in various emails he sent.

(d) Mr Newman's positive tests for Testosterone and Boldernone on 21 June 2008. DFS suggests that Mr Newman's evidence at the previous proceeding of the Tribunal must be viewed with scepticism.

27. The evidence of Ms Squire refers to two separate importations by Mr Newman, the second containing prohibited substances and the first believed to have contained prohibited substances. The first importation was in February 2008 when the New Zealand Customs Service (Customs) referred a parcel addressed to Mr Newman to the Ministry of Health. The Medsafe Investigation & Enforcement Team (Medsafe) inspected the parcel and sent a letter to Mr Newman stating that the parcel contained unlabelled tablets suspected to be steroids and that the parcel would be detained and destroyed. The parcel contained 150 white tablets wrapped in three separate packages, each of which had written on it "50" Test Susp (5mg)". Ms Squire's evidence was that this was an abbreviation for the prescription medicine Testosterone.

28. The second incident occurred in August 2009 when Customs referred three parcels addressed to Mr Newman to Medsafe. The parcels had been sent from Thailand. In each parcel there were nine plastic bottles, as well as an invoice for Thai liniment oil and an information sheet on the oil. Each bottle was labelled "Muay Thai Liniment Oil". On analysis, these bottles contained the six substances in respect of which the District Court found that Mr Newman had imported those substances. They were prescription medicines and on the then current WADA Prohibited List.

29. As a result of its investigations, Medsafe obtained a search warrant of Mr Newman's home. Various items were seized and those items included the prohibited substances which the District Court found that Mr Newman had in his possession. They are detailed in paragraph 21 above. The bottles in which the substances were found had various names on them which did not conform to the substances in the bottles. Bottles labelled "Vaginal Yeast Infection" when analysed were found to contain Metandieone, one bottle was full, one half full, one almost empty and another had a residue in it.

30. The bottles imported had a colour code on them by which the importer could ascertain from information provided by the supplier (which was also on the supplier's website) the substance in the bottle notwithstanding its misnaming. The evidence established that Mr Newman ordered the substances received, and not the substances which the labels wrongly indicated were in the bottles.

31. During the search, Mr Newman's computer was seized and documents retrieved from it. On the face of them these documents showed that Mr Newman had been purchasing prescription medicines on the astealth.com website from an entity named Advanced Stealth. He had sent an order by email on 11 August 2009 and on the face of it the substances which were sent from Thailand on 17 August 2009, and intercepted by Customs a few days later, were those referred to in the order. A payment information form in respect of this order requested payment of a Western Union transfer of US$752 to a Bangkok address. On 12 August 2009, Mr Newman sent an equivalent sum in New Zealand currency ($1,160) to that address.

32. There was a further order to Advanced Stealth dated 26 July 2009. This order included Testosterone. There was evidence of payment by Mr Newman of the cost of this order.

33. Mr Newman was cross-examined during the hearing on two email chains. The first was a series of emails between Mr Newman and an email address in September 2007. In that email, Mr Newman said:

> I have this year made multiple purchases from ADVANCED STEALTH and they are out of Thailand, but I am not too worried about this, even if your Feds have a record of my name somewhere.

34. He then asked the recipient to comment on the following:

> I have used GH and AAS since about 6 years ago when I turned 40 (never before then). I am an experienced hard training Powerlifter and former Bodybuilder. My immediate goal is the national bench press champs over here in 4 weeks time. I need to lose a couple of kgs and increase my strength a bit. To this end my intention was to do the following AAS cycle:
>
> Week 1: Injectables (M, W, F): Test Enanthate 200 mg, Test Suspension 50 mg, Trenbolone 200 mg and ORALS (M, T, W, T, F, S, S): 10 mg Halotestin, 50 mg Anadrol per day and extra 50 mg A-drol pre-workouts
>
> Week 2: Same as week 1, but increase Test Susp to 75 mg, Halo to 15 mg and Anadrol to 75 mg (and also 75 mg for the pre-workout dose)
>
> Week 3: Same as week 2, but increase Test Susp to 100 mg M, T, W, T, F, Halo to 20 mg, Anadrol to 100 mg (and also 100 mg pre workouts)
>
> Week 4: Same as week 2, but increase Test Susp to 150 mg for last 5 days up to comp and Anadrol to 150 mg per day.
>
> Any thoughts on this regime?

35. DFS's position was that this was a cycle for the use of steroids and this was not contested by Mr Newman.

36. The second email chain was in October 2008. In one of his emails, Mr Newman said:

> Ok, yes I am in New Zealand and I see that you don't normally ship here. However I am happy to take the risk that Customs here might seize the delivery. So I will pay you and if the goods get seized it's my problem, not yours. You keep the money and it's my bad luck. I have imported steroids from other suppliers in the past 2 years many many times and only on 2 occasions did the goods get seized. So about 95% success for me. Also, I have a lot of experience in dealing with Customs here, through my job with an import/export company. For a normal envelope with just a small

> amount of powder (say 1-10 grams) there should be no problem. So I am happy to pay you and then the risk of non-delivery is my risk, not yours. Is that satisfactory. I hope so, because you are highly recommended and I have lost confidence in my previous supplier.
>
> Also, is it possible to get testosterone suspension powder? If, you can I would like to order some.
>
> Ok, so assuming all is ok, can you please give me payment details and I will send you the money for my order immediately.

37. Mr Newman did not deny being involved in these email exchanges. Nor did he deny receiving the substances ordered, or that they were prohibited substances of the steroid nature. He gave two reasons for the importation of these drugs and if these reasons are correct he did not himself use the steroids.

38. The first reason which he had also given in the District Court proceeding was that around about the year 2000 he was a patient of Dr Wilson. He got assistance from the doctor for both his weight training and another personal problem he had. At that stage, he was a keen gym user but was not a competitor. It was his intention to get involved with the doctor to help him bring in these prohibited drugs and the intent was to supply those drugs to Dr Wilson. He would have got some payment but, in fact, no payment ever eventuated. Dr Wilson, who was subsequently struck off the medical register and went overseas, has apparently died. Incidentally it was Mr Newman's evidence that Dr Wilson may have injected him with Boldenone and Testosterone and may have been the reason for his previous appearance before the Tribunal.

39. Mr Newman's second reason was to get information which he could not get if he had made a formal approach. He was hoping to get information on the proposed 4 week cycle of drug taking as it was his intention when he finished his competitive career to go onto such a cycle to see if he could achieve his personal goals. He had no intention of using any drugs until he had retired from

competitive power lifting. It was his evidence that the supplier by commenting on the cycle would give him the required advice to assist him.

40. Mr Newman's position is that the emails were for those two purposes. He wanted information for future use and he saw a business opportunity. Mr Newman saw this as a legitimate business connection and did not think that what he would have been doing was unlawful. Then his second purpose was to get information for his own future use.

41. Further, it was Mr Newman's evidence that he knew he would be tested in competition and he was not foolish enough to use prohibited substances with that knowledge.

42. Although not relevant to the decision of this Tribunal, Mr Newman does challenge certain findings made by the District Court, including the fact that he used someone else's credit card to purchase some of these prescription drugs.

43. The final point made by DFS was that in his appearance before the Tribunal in July 2008 Mr Newman had suggested that the Boldenone and Testosterone had got into his system through supplements. The Tribunal decision at the time notes that:

> …frustration at a decline in performance level led Mr Newman to engage in what he described as the taking of a "cocktail" of supplements which he identified for himself.

44. In 2008, Mr Newman admitted the violation and there is no detailed discussion in the Tribunal's then decision on the manner in which the Boldenone and Testosterone entered Mr Newman's system. It is apparent, however, that the submissions were on the basis that they came from supplements. Mr Newman is now saying that they may have been injected into him by Dr Wilson without his knowledge. It is on the basis of this apparent change of position that Mr Hikaka submitted that this Tribunal should view Mr Newman's evidence in the earlier case with scepticism.

45. The Tribunal has carefully considered the evidence and has concluded, to its comfortable satisfaction, that DFS has established that Mr Newman did use the prohibited substances during the stated period.

46. In September 2007, Mr Newman said in an email that he had used growth hormones and steroids for about 6 years. He set out his proposed cycle of use and referred to having made multiple purchases from Advanced Stealth that year. The Tribunal cannot accept, in view of the other evidence, that in 2007 Mr Newman was preparing to find the perfect recipe to give him the steroid support he needed to achieve his personal goal once he retired, when it is apparent that he was still competing for a reasonable period after that date. He competed in the North Island Power Lifting Championships in June 2008.

47. Further, it is rather inconsistent with his intention to retire that his counsel at the hearing of the first violation in October 2008 sought to have the two year period of ineligibility commence from the date of the championship rather than the presumptive date of the decision, namely November 2008.

48. The package which Customs destroyed in February 2008 was on the evidence a package containing Testosterone and was addressed to Mr Newman.

49. In the email exchange of October 2008, Mr Newman was advising another potential supplier that he had imported steroids from other suppliers in the past two years and only on two occasions had the goods been seized. This comment gives credence to the suggestion that the packages destroyed in February 2008 contained steroids. In one of the emails dated 27 October 2008, Mr Newman was on the face of it purporting to persuade a supplier to accept an order from him. This email was sent after his hearing before the Tribunal on 23 October 2008 and before the decision of the Tribunal was issued on 5 November 2008.

50. Further evidence is the quantity of drugs seized at Mr Newman's property. The fact that some of the bottles indicated that the drug had been used is also a relevant factor suggesting usage by Mr Newman.

51. The Tribunal does not accept that the earlier importations were pursuant to a business arrangement with Dr Wilson, a doctor who to Mr Newman's knowledge was under investigation by Medical Authorities and from whom he accepts he received no money for importations.

52. The combination of the above evidence all leads to the inevitable conclusion that Mr Newman was using steroids at various times between the end of October 2006 and 1 October 2009. The only contrary indication is the evidence of Mr Newman himself who says that the importation was either for the use of Dr Wilson or was to be stored by him and used by him for his one last effort to achieve a personal best in a power lifting discipline after he had ceased to be a competitor and therefore ceased to be under the anti-doping regime imposed by the SADR. In this respect, the Tribunal has not found Mr Newman to be a convincing witness. Even if he genuinely now believes what he is saying, the facts do not support his evidence. It is clear from the District Court case that Mr Newman enquired of more than one supplier but chose Advanced Stealth because Dr Wilson had tested its products earlier and found them to be of good quality. Thus, products had been tested by Dr Wilson well before 2006. Those products would have either been imported by Dr Wilson or by Mr Newman. We cannot accept that in 2007 Mr Newman was asking for comments on a cycle for the use of steroids merely for future use when he retired when he obviously had a good knowledge of the products at that time and there is no evidence of his intended imminent retirement. He was purchasing products from a company which went to considerable lengths to disguise those products and he was well aware of the manner in which they were being disguised.

53. In the circumstances, it is this Tribunal's view that DFS has established to the comfortable satisfaction of the Tribunal that Mr Newman used or attempted to use prohibited substances at various times between 27 October 2006 and 1 October 2009. For the same reasons it follows that Mr Newman was in possession of the prohibited substances during the same period.

Conclusions on Violations

54. The Tribunal to its comfortable satisfaction determines that Mr Newman committed the five violations referred to in paragraph 6 above.

Sanctions

55. The submission of DFS is the appropriate sanction is a period of lifetime ineligibility. Under the SADR which were in force when some of the violations were committed, a second violation required the imposition of a lifetime period of ineligibility.

56. The position has since changed and, under r.14.7.3 of the Sports Anti-Doping Rules 2012, a third anti-doping rule violation will always result in a lifetime period of ineligibility. If the current rules are to apply and all the five violations are treated as one violation then a lesser sanction could be imposed.

57. DFS accepts that it would be appropriate to apply the principle of *lex mitior* in this case and impose the sanction under the present rule. However, even if that rule is to be applied, DFS still seeks a lifetime period of ineligibility, either on the basis that there is at least a third violation involved or, alternatively, that the aggravated circumstances rule should be applied. Rule 14.6 of the current rules refer to particular circumstances in which the period of ineligibility may be increased for aggravating circumstances.

58. DFS submits that there are aggravating circumstances in that Mr Newman possessed and used a large quantity of performance-enhancing drugs, over a long period of time, while competing at a national level in a sport where the substance gave him a direct advantage, and he was seeking that advantage. Further, Mr Newman's conduct showed a flagrant disregard for the illegalities involved in what he did and was undertaken in a manner designed to deliberately conceal his conduct.

59. It is a moot point as to whether the Tribunal is required to treat all five violations as one second violation because of the provisions of r.14.7.4 of SADR. It would seem illogical to do so when there are distinct and different violations in this case.

60. However, it is not necessary to resolve this interpretation difficulty. In the Tribunal's view, this is a case where r.14.6 of the SADR applies. There are clearly aggravating circumstances of the nature referred to in DFS's submissions. These are of sufficient gravity in this case, in the Tribunal's view, to impose a lifetime period of ineligibility.

Decision

61. Mr Newman is found to have committed the five violations alleged and a sanction of lifetime ineligibility is imposed upon him.

Dated 31 January 2012

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B J Paterson QC
Chairman