

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)**

**ANTI DOPING DISCIPLINARY HEARING**

<b>ATHLETE:</b>	<b>NZUZO BATHANDWA NGXONGO</b>
<b>SPORTS FEDERATION:</b>	<b>SOUTH AFRICAN NATURAL BODYBUILDING ASSOCIATION</b>
<b>DATE:</b>	<b>15 NOVEMBER 2011</b>
<b>PLACE OF HEARING:</b>	<b>1 MONA CRESCENT, NEWLANDS, CAPE TOWN</b>
<b>DISCIPLINARY PANEL ("PANEL"):</b>	<b>JEROME THOMAS (CHAIRMAN &amp; LEGAL REPRESENTATIVE)</b> <b>GEORGE VAN DUGTEREN (MEDICAL REPRESENTATIVE)</b> <b>WILLIAM NEWMAN (SPORTS ADMINISTRATOR &amp; REPRESENTATIVE)</b>
<b>PROSECUTOR:</b>	<b>NIC KOCK</b>
<b>SAIDS REPRESENTATIVES:</b>	<b>FAHMY GALANT</b>
<b>ANTI-DOPING RULE VIOLATION:</b>	<b>ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES</b>

## **LEGAL FRAMEWORK**

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South Africa Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of The Rules.

## **HEARING**

The hearing took place on 15 November 2011 at 18H30 at the SAIDS offices in Newlands, Cape Town.

The Chairperson opened the hearing and explained the procedure to be followed.

## **CONCESSIONS MADE BY THE ATHLETE:**

The athlete conceded the following during the hearing:

1. That he had received the communications regarding the notification of the adverse finding and the charges were put to him timeously and in order.

2. That he did not request his "B" sample to be tested and that it was common cause that the substance reported was present in his system and was a prohibited substance (WADA code 2011 Prohibited List) being Furosemide an S5 Diuretic which was found during an in-competition test at The South African Natural Bodybuilding Championships.
3. That he had been given the tablet "a small white pill" by a person whose identity he did not wish to disclose and that he did so in order to define his muscles in that a diuretic would reduce the water in his system and consequently "make him more ripped". The tablet was ingested the day before the competition.

## **VIOLATION**

4. Article 2.1 of the SAIDS Rules reads as follows:

### **2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.**

- 2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 violation under Article 2.1."
5. From the concessions made by the athlete as described above, it is clear that the Athlete violated the SAIDS Rules as the Rules are applied in terms of strict liability and accordingly no intent, fault, negligence, or knowing Use need be proved.

6. The Prosecutor Mr. Kock called for a 24 month suspension of the Athlete, taking into account the time already served, which was in his opinion justified by the high prevalence of the use of Diuretics to enhance performance in bodybuilding which gave the Athlete an unfair advantage.

## ISSUES FOR CONSIDERATION

7. Article 10.4 of the SAIDS Rules reads as follows:

" Where an *Athlete* 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 Substances was not intended to enhance the Athlete'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 *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which established to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period *Ineligibility*. "

This Article is not applicable in this instance as though the athlete did not know the name of the tablet, he was fully aware of the effect and functioning of the tablet and that he took same in order to enhance his performance.

8. Article 10.5.1 of the SAIDS Rules reads as follows:

*" No Fault or Negligence*

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or its *Metabolites* is detected in an *Athlete's* Sample in violation of *Code Article 2.1 (Presence of Prohibited Substance)*, the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* eliminated.

In the event that this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7. "

This Article has no application as there are no grounds upon which a *No Fault or Negligence* defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

9. Article 10.5.2 of the SAIDS Rules reads as follows:

*" No Significant Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case 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 period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's* Sample in violation of *Code Article 2.1 (Presence of Prohibited Substance)*, the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* reduced. "

This Article has application in that the Panel was satisfied that the *Athlete* was:

- 9.1 extremely young and inexperienced as well as his naïve disposition being 20 years old at the time of the test,
  - 9.2 from a disadvantaged background;
  - 9.3 living in residence in an unsupervised environment;
  - 9.4 no anti-doping education or assistance was provided to the Athlete at all;
- and that these factors are relevant in determining the ineligibility period.

10. *Article 10.5.3 of the SAIDS Rules reads as follows:*

“ Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. The SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of *Ineligibility* imposed in an individual case where the *Athlete* or other *Person* has provided Substantial Assistance to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another *Person*. After a final appellate decision under Article 13 or the expiration of time to appeal, the SAIDS Anti- Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may only suspend a part of the applicable period of *Ineligibility* with the approval of WADA and the applicable International Federation. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping sport. No more than three-quarters of the otherwise applicable period of *ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under the section must be no less than 8 years. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel suspends any part of the period of *Ineligibility* under this Article, it shall promptly provide a written justification for its decision to each *Anti-Doping Organization* having a right to appeal the decision. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel subsequently reinstates any part of the suspended period of *Ineligibility*

because the *Athlete* or other *Person* has failed to provide the Substantial Assistance which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 13.2. ”

This Article has no application in that the athlete did not take the panel into his confidence by refusing to divulge the identity of the provider of the substance and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

## DECISION

11. The Panel found that the Athlete was an honest witness and disclosed all relevant factors. However, the Athlete did not disclose the identity of the provider of the substance and accordingly the Panel could not reduce the period of ineligibility based on Article 10.5.3.
12. In that a violation had occurred Articles 10.1.1 and 10.2 of the SAIDS Rules have application and provide as follows:

### ***Disqualification of Results in an Event During which an Anti-Doping Rule Violation Occurs***

“ An Anti-Doping rule violation occurring during or in connection with an *Event*, may upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all the *Athlete's* individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2. ”

### ***Imposition of Ineligibility for Prohibited Substances and Prohibited Methods***

“ The period of *Ineligibility* imposed for a violation of *Code* Article 2.1 (Presence of *Prohibited Substance* or its *Metabolites* or *Markers*), *Code* Article 2.2 (Use or Attempt Use of *Prohibited Substance* or *Prohibited Method*) and *Code* Article 2.6 (*Possession of Prohibited Substances* and

*Prohibited Methods*) shall be as follows, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6, are met: First violation: Two (2) year's – *Ineligibility*. ”

13. The base period of ineligibility for a first violation is two years.
14. The Panel taking into account the mitigating factors described above accordingly finds that a period of ineligibility of 18 months is appropriate taking into account time served as of 30 August 2011 and therefore being completed on 28 February 2013.
15. All medals received in the competition are also forfeited as in Article 10.1.1 above.