

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MS JULIE TSHABALALA

SPORTS FEDERATION: BOXING SOUTH AFRICA (“BSA”)

DATE: MONDAY, 28 NOVEMBER 2011

PLACE OF HEARING: GARDEN COURT, SOUTHERN SUN HOTEL, KEMPTON
PARK, OR THAMBO INTERNATIONAL AIRPORT.

DISCIPLINARY PANEL (“PANEL”): MR ANDREW BREETZKE (CHAIRMAN)
DR ROB COLLINS (MEDICAL REPRESENTATIVE)
PROF DENVER HENDRICKS (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV NIC KOCK

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE
2.1 OF THE SAIDS ANTI-DOPING RULES.

APPLICABLE LAW

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 African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules (“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, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

PROCEDURAL MATTERS

The Athlete was in attendance, and was assisted by Mr Enoch Nxumalo (“EN”). Ms Mbali Zantsi (“MZ”), the promoter of the Athlete, was present as a witness on behalf of the Athlete.

The rights of the Athlete were explained to her, and she acknowledged that she understood her rights, understood the process and was ready to proceed. The process to be followed was explained in detail to the Athlete.

SUMMARY OF EVIDENCE AND ARGUMENT

The Prosecutor presented a bundle of documents marked “A” to “E” as documentary and corroborative evidence to the oral evidence presented.

The charge against the Athlete was set out in written correspondence addressed to the Athlete on the 7 November 2011. The charge against the Athlete read as follows:

You have been charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).

On 27 August 2011, you provided a urine sample (A2632273) during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of prohibited substances in your urine sample. The substance identified was 11-nordelta-tetrahydrocannabinol-9-carboxylic acid (The concentration is 75ng/ml which is above the World Anti-Doping Agency decision limit of 18nb/ml), a metabolite of Cannabis. 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid is categorised under Class S8. "Cannabinoids", on the World Anti-Doping Code 2011 Prohibited List International Standard.

The Athlete pleaded *Not Guilty* to the charge, explaining that she did not take the prohibited substance. However, it was evident in the hearing of the matter that the Athlete did not comprehend/understand the process/implication of her plea.

The Athlete is an adult female, who returned the above positive test on the 27 August 2011 after her South African Middleweight Championship Fight. The Prosecutor gave evidence as to the testing process undertaken, presenting the Doping Control Form ("C") as well as the A-Sample Reports ("D") indicating the presence of the identified substance. The chain of custody form of the doping control session was also presented ("E"). The Athlete had not requested that a B sample be taken. The evidence presented showed the presence of the prohibited substance and there was no evidence to dispute this.

The Athlete gave evidence that she had not intentionally used dagga and was therefore confused when she was advised of her positive test. She had been suffering from flu symptoms and had used Benylin. She had also received an injection from her doctor, but this had caused an allergic reaction. She then approached a traditional healer (a family member) who gave her a traditional herb remedy (an *imbiza*/concoction). On being advised of the positive test she confronted the traditional healer who confirmed that there was dagga in the herb that the Athlete was using. She had been using the herb for a number of months. This was the first test she had undertaken and she apologised for what had happened.

FINDING ON THE CHARGE

The presence of the substances identified as *11-nordelta-tetrahydrocannabinol-9-carboxylic acid* (The concentration is 75ng/ml which is above the World Anti-Doping Agency decision limit of 18nb/ml), a metabolite of Cannabis was proven. Despite the plea of Not Guilty by the Athlete, the evidence as to the presence of the substance was uncontested and the Athlete admitted to taking a traditional herb concoction that contained the prohibited substance. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1.1 of the Rules reads as follows:

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.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-doping provisions and/or prohibited list cannot be accepted as an excuse. This high and strict standard is not diluted by the fact that an athlete may be taking medication for flu. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

Despite this strict standard, the Panel is however able to eliminate, or reduce the period of ineligibility and may award, at a minimum, a reprimand and, at a maximum, a period of two (2) years ineligibility. The question of whether it is appropriate to decide on a period “no

ineligibility” or “some ineligibility” depends on the degree of fault the Panel considers to exist on the part of the Athlete. Article 10.4 is the relevant provision and reads as follows:

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

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 Substance 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 establishes 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 of Ineligibility

The issue before the Panel is therefore whether circumstances exist such that it is able to consider any elimination, or reduction, of the period of ineligibility as provided for under Article 10.4. This entails a consideration of the degree of fault of the individual athlete and the appropriate sanction for the athlete viewed in the light of that degree of fault. In this regard the following factors were presented:

- The Athlete had an education level of Grade 11, and had not studied further. She is 31 years of age;
- She has been boxing since 2000, and has been professional since 2008;

- She is the SA Champion in the middleweight division;
- She only boxed, and does not coach;
- She had received anti-doping information in the last month, but had not received any education on the topic before this. She had received no pamphlets or information.
- This was her first test;
- She had been going to the Traditional Healer for the past two years in Winter;
- The Athlete was remorseful and stated that her boxing was her livelihood and she would not jeopardise it by taking a prohibited substance.

The promoter of the Athlete, MZ, gave evidence in mitigation and confirmed the following:

- The Athlete was not aware that there was dagga in the traditional herbs, and would not intentionally take a prohibited substance;
- The athletes were not provided with specific medical assistance, and were therefore responsible for their own medical care;
- From her earnings as a boxer she is supporting 2 children, as well as her sisters 2 children. She also supports her mother. She is the breadwinner and cannot easily secure alternative employment given her limited education.

The Prosecutor argued for a sanction of 3 (three) months on the finding of Guilty.

The responsibility on the Athlete is a personal responsibility to ensure that no prohibited substance enters her body – she has a duty of care in this regard.

As stated, the application of Article 10.4 requires a review and assessment of the degree of fault on the part of the Athlete. In the matter of *FINA v Cesar (Court of Arbitration for*

Sport 2011/A/2495), the Court in reviewing and assessing the degree of fault of an athlete in respect of the equivalent “special circumstances” clause focused on whether the athlete could have initiated any action to avoid the positive test results. *In casu*, to regard the ignorance of the Athlete as to the anti-doping process/SAIDS Rules as a special circumstance resulting in no-fault on the part of the Athlete, would be to undermine the integrity and objectives of the anti-doping process.

However, it is evident that she had no intent to enhance her performance, and had no knowledge that the traditional herb remedy contained dagga. Furthermore, this is not a matter where the Athlete has utilised the substance for recreational purposes. The remorse of the Athlete and her personal circumstances are further factors considered in mitigation.

In reviewing the above, the sanction on the finding of Guilty is as follows:

1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.10 of the Rules, for a period of three(3) months which period will be effective as of 28 September 2011 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on the 28 December 2011;
2. The above anti-doping violation occurred during the South African Middleweight Championship fight on the 27 August 2011. The rule violation is therefore related to an in-competition test. In terms of Article 9 of the Rules an anti-doping violation in individual sports in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition, including forfeiture of medals, points and prizes. In accordance with this Rule, the Athlete therefore forfeits her performance in the South African Middleweight Championship fight including medals, points and prizes.

In making the above finding, the Panel would also like to highlight the fact that it was regrettable that a representative of BSA was not present at the Inquiry. The facts of this matter highlighted the desperate need for education of athletes on issues of anti-doping in the sport of Boxing. The ignorance of the Athlete as to anti-doping rules; the use of traditional remedies and the socio-economic circumstances of the Athlete highlight the challenges facing athletes in this sport. Urgent intervention is required by BSA and/or SAIDS to ensure that the above facts are not repeated.

This done and signed at Cape Town, November 2011

Andrew Breetzke (Chair)

Dr Rob Collins

Prof Denver Hendricks