

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: MR HARALD PIETER VAN STADEN

SPORTS FEDERATION: SOUTH AFRICAN RUGBY UNION

DATE: 19TH DECEMBER 2011

PLACE OF HEARING: GARDEN COURT SOUTHERN SUNS
HULLEY ROAD
ISANDO
KENPTON PARK

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL
REPRESENTATIVE)
DR. SELLO MOTAUNG (MEDICAL
REPRESENTATIVE)
MR LEON FLEISER (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV NIC KOCK

SOUTH AFRICAN RUGBY UNION: NONE

**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.

The Hearing commenced at 5:30pm.

The Panel recorded its disappointment at the fact that there was no representative of the South African Rugby Association in attendance at the hearing.

PROCEDURAL MATTERS

The Athlete was not in attendance at the proceedings. The panel requested the issue of his non-attendance be addressed by the prosecutor. The athlete was advised of the hearing on the 28th November 2011 by way of written notification (email) attachment ("M"). On the 5th of December 2011 the documentation for the enquiry was couriered to the athlete. On the 13th of December 2011, the athlete was requested to confirm in writing whether or not he will attend the hearing. This

communication was done by email. On the 14th of December 2011, the athlete responded. The pertinent part of the email reads as follows: "I would like to confirm I will not be attending the hearing. I have to work to pay for my studies & won't be able to get off. I accept all the consequences & don't need a telephone conference call. You can just email me what they decided".

In reviewing the necessary evidence, the panel was satisfied that the athlete had received proper notification of the hearing and had voluntarily elected not to attend the proceedings and not to be part of the hearing by way of a telephone conference call. The panel was therefore satisfied that the matter could proceed in the absence of the athlete. The panel would like to record its disappointment at the fact that no representative of the South African Rugby union was in attendance at the hearing, despite a formal invitation to attend being forwarded to the same federation.

The prosecutor applied for an amendment to the charge sheet. The date the urine sample taken was incorrectly stated in the charge sheet. The charge sheet reflected the date 8th October 2012. It should have read 8th October 2011. The panel granted the amendment.

THE EVIDENCE AND ARGUMENT

The Prosecutor presented a bundle of documents marked "A" to "N" as documentary and corroborative evidence to the oral evidence presented. There were no documentation sent through by the athlete. The charge against the athlete was set out in a written correspondence dated the 5th of December 2011. ("A"). The charge sheet reads 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 8th October 2011, you provided a urine sample (A2632607); during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of a

prohibited substance in your urine sample. The substance identified was 2 α -Methyl-5 α -androstan-3 α -ol-17-one, which is metabolite of the Anabolic Agent, Drostanolone. Drostanolone is categorised under Class S1. "Anabolic Agents" on the World Anti-Doping Code 2011 Prohibited List International Standard.

The Athlete is an adult male, who returned the above positive test sample at the South African Rugby Union under 21 inter provincial game between the Leopards (the athletes' province) and the Sharks. The Prosecutor testified as to the testing process that was undertaken. He presented the Doping Control Form ("C") as well as the Laboratory A-Sample Analysis Report ("D") which indicated the presence of the identified substance. The Chain of custody form of the doping control session was also presented as evidence ("E"). On being informed of the present substances in the A-Sample, the athlete via email dated the 9th of November 2011 requested an analysis of his B-Sample. His B-Sample also tested positive. Report ("F") and ("G") indicating the presence of the identified substances and the chain of custody form for the B-Sample ("H").

THE PROSECUTORS ADDRESS

The Prosecutor argued that the evidence proved conclusively that the athlete was guilty, he further argued that the evidence presented justified a sanction for a period of 2 years in eligibility. He argued that the maximum was justifiable in view of the fact that the substance identified was in fact a performance enhancing substance. There was no explanation by the athlete indicating anything to the contrary

FINDING ON THE CHARGE

The presence of prohibited substance identified as *2 α -Methyl-5 α -androstan-3 α -ol-17-one, metabolite of drostanolone* in the sample (sample number A2632607 and B2632607) of the Athlete was uncontested. The Panel therefore determined that the Athlete is guilty of the offence as set out in the charge sheet, 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 21.1 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. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

Despite the 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.

In this case, the athlete has failed to appear before the panel to testify or to participate in the hearing via conference call. The substance concerned is a performance enhancing substance. The panel cannot speculate on how the substance entered the athletes' body nor can it speculate as to the reason why the substance was in the athletes' urine sample.

The panel took into account in mitigation of sentence, the athlete was a young man who played for the under 21 provincial rugby side. It is clear that he participated at a very high level. It is also clear that his rugby career would be affected by any period of ineligibility.

In aggravation of sentence, the panel took into account that:

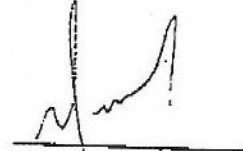
- The substance was a performance enhancing substance.
- There is an onus on athletes to ensure that no prohibited substances enter his body.

The athlete has failed to give an explanation as to how the substance entered his body. In the circumstances the panel has decided on the following sanction on the finding of guilt:-

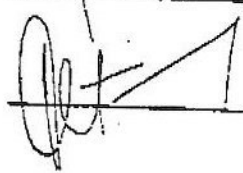
- 1) the athlete is ineligible to participate in any organized sport or higher level or as envisioned in article 10.10 in the rules for a period of 24 months which period will be effective from the 19th December 2011, (being the date of the hearing), to terminate on the 18th December 2013. There was no indication from the athlete that he had refrained from participating in the sport from the date he received notification of his provisional suspension. The athlete's failure to attend the hearing left the panel with no option but to impose the sentence effective from the date of the hearing.

1 DATED AT DURBAN THIS 19th DECEMBER 2011.

SIVEN SAMUEL (Chair)



DR. SELLO MOTAUNG



MR LEON FLEISER

