

P.O. Box 2266
North End
PORT ELIZABETH
6056

4th February 2013

The South African Institute for
Drug-Free Sport
P.O.Box 2553
CLAREINCH
7740

Dear Sir

Re: NKQUBELA APHIWE NTLOKO : ADVERSE ANALYTICAL FINDING

The Tribunal sat at Marine Protea Hotel, Port Elizabeth on the 5th December 2012 to consider the adverse analytical finding – sample number 2725466 in respect of the abovementioned athlete.

In attendance were the members of the Tribunal namely:

- (i) Mr Silas Nkanunu – Chairperson;
- (ii) Dr Deon –Jacques Pieterse; and
- (iii) Mr Wendell Domingo.

Also in attendance were:

- (i) Advocate Nicolas Kock as representative of SAIDS;
- (ii) Mr Godfrey Simmons on behalf of the Eastern Cape Natural Body Building Association;
- (iii) Ms S Pretorius who recorded the proceedings.

In the documentation there was no proof that the athlete was notified by means of registered post as provided for in Article 19.2.3.

The athlete was not present and no reason for his failure to attend was tendered. He was telephoned several times in vain.

Mr Simmons reported that the Association, on receipt of the letter addressed to the Athlete dated 17th October 2012, convened an executive meeting at which N A Ntloko (the athlete) was in attendance. Mr Simmons could not say whether the athlete had received his letter from SAID's.

The Tribunal proceeded to deal with the matter in the absence of the athlete. The Tribunal received the following documents:

- (i) Copy of the letter from the SAIDS to the Athlete dated the 17th October 2012;
- (ii) Copy of the doping control form marked 152/12 apparently completed by Jamaine September in Section A and signed by her and the athlete; Sections B and C thereof completed by Jayde Brooks in which particulars of arrival at the Doping Control Station and information for analysis were recorded; consent and medication supplements and athlete's confirmation of the procedure; Section D completed and signed by the doping control officer Sharief Gamiet and declaration signed by the athlete;
- (iii) Report on A sample analysis from the University of the Free State signed by the Director;
- (iv) Copies of e'mail correspondence among Hoosain Bester, Brandon Jacobs and Fahmy Galant;
- (v) Copies or sample chain of custody form;
- (vi) Copy of e'mail from Fahmy Galant to the athlete sent to him at Nelson Mandela Metropolitan University e'mail address and copied to Hoosain Bester and Brandon Jacobs notifying the parties of the charge and to which was attached a letter from SAIDS to the athlete dated the 15th November 2012 notifying the athlete of the hearing and related aspects.

All the above documents were considered and accepted by the Tribunal. In the absence of an expert witness on the doping control form, sample chain of custody form and sample analysis, the Tribunal was indebted to Dr Deon Jacques Pieterse for his professional assistance in confirming the adequacy thereof. He also briefed the Tribunal on methylhexaneamine.

Mr G Simmons volunteered a report of the executive meeting of the EPNBBA with the athlete in which the letter from SAIDS was dealt with as well as the violation of the association's disciplinary articles in terms of the Association's Constitution – Article 9.3 thereof – which, inter alia, deals with positive drug testing as well as any form of misconduct considered harmful to the image of the Association.

He went on to state that the athlete admitted guilt and was provisionally suspended for six (6) months subject to SAIDS Disciplinary Hearing which could impose a suspension of any period from six (6) months to two (2) years.

After hearing Mr Simmons report, the Tribunal adjourned for him to fetch and produce the code's provincial constitution and record of his notes taken at the said meeting.

When the Tribunal reconvened, G Simmons submitted the documents requested which revealed, inter alia, the following:

- (i) Copy of minutes referred in the heading as "DC meeting re: positive drug test";

- (ii) The athlete was apprised of his rights as set out in the letter from SAIDS;
- (iii) The athlete was provisionally suspended forthwith "until his sentence regarding his positive test is confirmed by the Institute";
- (iv) That his suspension can be anything between six (6) months to two (2) years if confirmed by the Institute;
- (v) The EPNBBA is of the opinion that he may only serve a six (6) month period if there is any mitigating circumstances; that final decision however rest with the Institute.

The constitution of the EPNBBA clearly empowers the Association to deal with disciplinary matters which are set out in Article 9.3 and include positive drug testing.

After careful consideration of the documents produced by and evidence of Mr G Simmons, the Tribunal resolved:

- (i) That the Tribunal hearing be adjourned for a further notice to be properly sent to the athlete to appear;
- (ii) That in the interest of fairness and justice such a step was necessary.

The further hearing proceeded on the 29th January 2013 at the City Lodge, Port Elizabeth at which the athlete was present and elected to deal with the matter on his own. He states that:

- (i) He received the letter from SAIDS dated the 17th October 2012 after the meeting of the executive of the EPNBBA;
- (ii) He accepted the procedure followed in testing and the result;
- (iii) He pleaded guilty to the charge;

After extensive questioning by the representative of SAIDS and members of the tribunal to clarify particular issues, it emerged that:

- (i) The athlete was strictly not a member of EPNBBA but possibly an associate and he did not even know its constitution;
- (ii) No training or guidance was afforded by the association and he had no knowledge of SAIDS and its requirements;
- (iii) He purchased the substance on his own unaware that it contained any prohibited substance.

The athlete is charged under Article 4.2 and has pleaded guilty thereto. We found that he did not use the substance to enhance his sporting performance.

In considering the appropriate sanction, the tribunal, in view of the mitigating circumstances applied Article 10.4 and imposed a suspension of nine (9) months from the 17th October 2012.

Yours in Sport

S N NKANUNU
CHAIRMAN
(Sgd S Nkanunu)

per: