

**BEFORE THE ANTI-DOPING TRIBUNAL OF SOUTH AFRICA**

**HELD IN JOHANNESBURG**

**CASE NO.**

**BRANDON STEWART**

**Applicant**

and

**THE SOUTH AFRICAN INSTITUTE FOR**

**DRUG FREE SPORT**

**Respondent**

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THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' APPEAL BOARD IN RESPECT OF THE FORMAL HEARING HELD AT THE JOHANNESBURG HOLIDAY INN, ROSEBANK ON THURSDAY THE THIRTEENTH DAY OF NOVEMBER 2014

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The Appeal Board consisted of the following Appeal Board Members -

Mr Raymond Hack	-	Chairperson
Mr. Rebaone Gaorelwe	-	Member
Dr. Phatho Cele-Zondi	-	Member

Which members were duly appointed to consider and adjudicate upon the appeal lodged against the Judgment handed down by the South African Institute for Drug Free Sport (SAIDS) Disciplinary Committee at its hearing on the 8<sup>th</sup> day of August 2014.

**1. INTRODUCTION**

- 1.1 This matter arose as a result of the Applicant receiving an adverse analytical finding for the prohibited substance commonly known as Testosterone, in-and-out-of-competition doping control test conducted by SAIDS Doping Control Officers at a UCI/ Cycling South Africa event held on the 7<sup>th</sup> day of July 2013.
- 1.2 Arising out of the above, the Applicant duly applied for and was denied a Therapeutic Exemption Certificate (TUE) and he subsequently

proceeded to apply for a review of the refusal at a TUE Appeal Hearing held on 28<sup>th</sup> day of January 2014.

- 1.3 On the 24<sup>th</sup> day July 2014, before an independent SAIDS Disciplinary Committee Tribunal held in Durban, the Applicant received notification that his appeal against the decision of the TUE Committee in respect of the TUE ruling, was unsuccessful. Thereafter a SAIDS Disciplinary Tribunal held on the 8<sup>th</sup> day of August 2014 rendered and returned a decision that the Applicant had been found to have tested positive for the presence of a prohibited substance, namely Testosterone, and was accordingly declared to be ineligible to participate in any organised sport, club or high level or as envisaged in article 10.10 of the SAIDS rules, for a period of two (2) years, which ineligibility included the coaching of the sport.
- 1.4 Arising out of such suspension it was found that despite the Applicant having been made aware of his ineligibility, the Applicant saw fit to breach the conditions of his sanction by assisting riders of his personal team during a UCI / Cycling South Africa accredited event, namely the ABSA Cape Epic which took place on the 27<sup>th</sup> day of March 2014. Arising therefrom, the Applicant's suspension which was imposed in terms of article 10.10 of the SAIDS Code, was extended for a further period of five (5) months.
- 1.5 At the appeal hearing held at the Holiday Inn Rosebank Johannesburg on the 13<sup>th</sup> day of November 2014, the Applicant chose not to be represented and presented his own defence, but was assisted by his wife Mrs Stewart.
- 1.6 The Respondent, the South African institute for Drug Free Sport, was represented by Advocate J Lubbe S.C.
- 1.7 In attendance as observers at the hearing was Professor Denver Hendricks in his capacity as the Chair of the SAIDS Appeals Committee, as well as a Mr Mike Bradley observing on behalf of Cycling South Africa, and Mr Nick de Kok observing on behalf of SAIDS.
- 1.8 The recorder and minute taker was Sam Mahiya.

## 2. SUBMISSIONS BY THE PARTIES:

- 2.1 The Applicant referred to his written Heads of Argument on appeal, and reiterated and revisited the contents of his Heads of Argument where he had set out his contention namely that:-
- 2.1.1 With regard to the declaration of use prior to finding or testing, the Applicant contended that he was in communication throughout the process prior to the Testosterone treatment and subsequent to the treatment with the relevant personnel. The substance was declared by name (Nedibo) on an in-and-out-of- competition doping control test forms, from as far back as January. He submitted that this clearly indicated that he did not intend to cheat, but rather sought assistance in following the procedure correctly. The Applicant made these allegations and alleged that he had plenty of written correspondence and doping control forms to substantiate this statement.
- 2.1.2 He further contended that with reference to the consistence in application of regulations the Rules and regulations of SAIDS/WADA are fairly applied to all athletes regardless of status. The Applicant did not dispute that he had a positive doping control test, but alleged that prior to the hearing SAIDS hearing, SAIDS legal counsel was instructed that they had no authority to offer him a deal. He contended that the SAIDS legal counsel had said that the Applicant had brought them into disrepute in the media and made their organisation look incompetent. The Applicant thereafter stated that his media press release was to protect his own rights and reputation, and not to bring SAIDS into disrepute. He contended that this surely indicated that the ultimate decision handed down was personally influenced and prejudiced.
- 2.1.3 The Applicant further stated that in as far as mitigating circumstances were concerned, he requested it be taken into account that it was never his intention to cheat or commit an anti-doping violation, and he alleges that the evidence submitted corroborates this, which alone are grounds for at least a reduced sentence as has been the protocol with many athletes previously. He contended that the basis of this appeal was simply for the panel to consider under article 10.5.23 a verdict of no significant fault, or negligence.
- He stated that there have been many transgressions that have transpired and the Applicant asked that his honesty be taken into account, his declaration of the banned substance at all times and

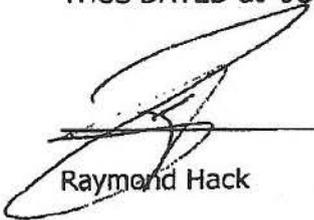
his willingness to try and cooperate with SAIDS. The Applicant contends that there seems to have been a misunderstanding on behalf of both parties which is the reason for the Applicant's case to be seen with certain mitigating circumstance and reduction in a heavily handed down sentence.

- 2.1.4 In conclusion, and dependant on the outcome of the hearing, the Applicant advised that should the review not be favourable then he reserves the right to proceed legally within his civil rights as well as pursuing the matter further in the Court of Arbitration for Sport in Switzerland under the legal counsel of Mr Mike Morgan.
3. Counsel for the Respondent thereafter dealt with the Applicants submissions and referred to his points raised in his Heads of Argument as follows:-
    - 3.1 That it is not in dispute that the Applicant made use of a prohibited substance and that the only issue that the Tribunal of First Instance had to decide was whether it is a case of no fault/negligence or no substantial fault or negligence.
    - 3.2 That the Tribunal of First Instance correctly held that the Applicant who was "an experienced professional athlete, is in the registered testing pool and has undertaken numerous doping tests" was under a positive obligation to have detailed knowledge of the anti-doping rules and regulations. (Judgment p10)
    - 3.3 That the Tribunal of First Instance did not in any way misdirect itself on the facts and/or law and that the appeal cannot succeed.
    - 3.4 That the appeal should be dismissed and that the Applicant be ordered to pay the costs thereof.
  4. ASSESSMENT OF THE ARGUMENTS, AND DOCUMENTATION
    - 4.1 The committee, after deliberation, unanimously decided that the Applicant had not in any manner produced evidence or convinced them that he had fulfilled the provisions of article 10.5.1 read together with article 10.5.2, and neither had the Applicant given any reasonable explanation for having transgressed the period of his sanction in terms of article 10.10 of the rules.
    - 4.2 The Applicant also failed to submit any evidence in regard to his contention that the Tribunal had in the first instance misdirected itself on the facts, and/or in law.

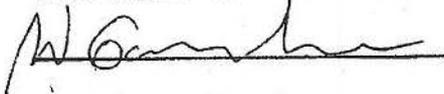
5. FINDINGS AND REASONS

Taking all the above into consideration, the Appeal Board unanimously determined that the appeal lodged by the Applicant be dismissed, and the Applicant ordered to pay the costs of the appeal.

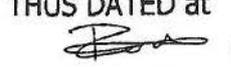
THUS DATED at JOHANNESBURG on this the 17<sup>th</sup> day of NOVEMBER 2014

  
Raymond Hack

THUS DATED at Jhb on this the 1<sup>st</sup> day of DECEMBER ~~NOVEMBER~~ 2014

  
Mr. Rebaone Gaorelwe

THUS DATED at Johannesburg on this the 20 day of NOVEMBER 2014

  
Dr. Phatho Cele-Zondi