SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/0000120082

NATIONAL ANTI-DOPING PANEL

Before:
Tim Kerr QC (Chairman)
Dr Kitrina Douglas (Specialist Member)
Dr Terry Crystal (Specialist Member)

B E T W E E N:

UK Anti-Doping Limited

Applicant

- and -

Mr Kenneth Anderson

Respondent

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE BRITISH BOXING BOARD OF CONTROL AGAINST MR KENNETH ANDERSON

DECISION OF THE ANTI-DOPING TRIBUNAL

Date of hearing: **25 April 2013**

Date of decision: **16 May 2013**

1. INTRODUCTION

1.1 This is the decision of the Anti-Doping Tribunal convened under Article 5.1 of the 2010 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 8.1.1 of the Anti-Doping Rules of the British Boxing Board of Control ("the Anti-Doping Rules") to determine a charge brought against Mr Kenneth Anderson ("the Athlete" or "Mr Anderson").

1.2 The hearing was convened to determine a charge for alleged commission of an Anti-Doping Rule Violation in breach of Article 2.1 of the Anti-Doping Rules. The hearing took place at the offices of

Sport Resolutions (UK) in London on 25 April 2013, in accordance with the chairman's procedural orders dated 25 February and 11 March 2013.

1.3 By Article 2.1 of the Anti-Doping Rules the presence of a prohibited substance or metabolites in an Athlete's sample is an offence unless consistent with a therapeutic use exemption. The charge is that the urine sample provided by the Athlete on 20 October 2012 at the British Super Middleweight Championship in Sheffield, contained amphetamine, a prohibited substance.

1.4 At the hearing on 25 April 2013, UK Anti-Doping Limited ("UK Anti-Doping") was represented by Mr Jonathan Taylor, of Bird & Bird, Solicitors, assisted by Ms Hannah McLean of UK Anti-Doping. Mr Anderson was present, and was represented by Mr Jim Sturman QC, assisted by Miss Alice Bricogne, both instructed by Mr Matthew Bosworth of Russell-Cooke Solicitors.

1.5 The tribunal was grateful for the written and oral presentations from the parties' representatives, which were of the highest quality. We understand that Mr Sturman, Miss Bricogne and Mr Bosworth gave their services *pro bono*, for which we are particularly grateful.

1.6 This document constitutes the reasoned decision of the tribunal, reached after due consideration of the evidence heard and the submissions made by the parties attending at the hearing and in writing. Only some of the factual history below is accepted by UK Anti-Doping. We indicate below the matters that are contentious and we indicate in our reasoning and conclusions the extent to which we accept the factual assertions of the parties.

2. THE FACTS: BEFORE THE CHARGE

2.1 The Athlete is a 30 year old Scottish super middleweight professional boxer. For many years he has lived in Edinburgh, [redacted]. Mr Anderson is an emotional and passionate man as well as a champion boxer. He was upset when giving evidence.

2.2 Mrs [redacted] ("Mrs [redacted]"), Ms [redacted]'s mother, lives nearby. She has had a difficult time with her elder daughter, Ms [redacted]'s sister, whose children she has had to look after. Mrs [redacted] has a son, [redacted]. He is the brother of Ms [redacted] and is a close and longstanding friend of Mr Anderson.

2.3 Mr Anderson has been Super Middleweight Commonwealth Champion. He captained the Scottish team for several years. Several years ago he was diagnosed with depression and is on long term medication in the form of anti-depressant and anti-psychotic drugs. These are not prohibited substances requiring a therapeutic use exemption. Mr Anderson has been subjected to doping control three or four times, with negative result each time.

2.4 Mr Anderson was due to compete against Mr Robin Reid for the British Super Middleweight Championship in Sheffield on the evening of 20 October 2012. He knew that he would be subject to doping control either before or after the fight. He denies knowingly ingesting amphetamine or any other banned substance before the fight. He said he would regard amphetamine as more of a hindrance than a help to his performance since he needs to be calm and collected when he fights, and understands amphetamine to have the opposite effect.

2.5 Mr Anderson attended the pre-fight weigh-in in Sheffield during the late morning or early afternoon of 19 October 2012, the day before the fight. The weight limit is 168 pounds. At the weigh-in, Mr Anderson weighed about one pound less than the limit. He had worked hard, as is usual, to "make the weight", i.e. ensure he did not exceed the weight limit. Mr Anderson says he spent most of the rest of the day and evening with Ms [redacted] at their hotel in Sheffield, the Jury's Inn, sharing the room with Ms [redacted] and ordering refreshments from room service.

2.6 Mr Anderson drinks quite a lot of tea and coffee and takes supplements, but does not drink alcohol. When he drinks coffee, if it is good coffee, he takes it with just milk and no sugar. He told us he does not recall drinking any specific cup of coffee that evening, when he was with Ms [redacted] at the hotel in Sheffield. His evidence was that there were tea and coffee making facilities in the hotel room and that it was highly likely Ms [redacted] made him a coffee at some point that afternoon or evening at the hotel, but does not recall specifically. Mr Anderson says he slept badly that night but did not feel physically different from usual.

2.7 The next day, 20 October 2012, he attended the arena where the fight was to take place, with Ms [redacted] and two trainers, in the early evening, and was subjected to doping control before the fight. The details of the doping control procedure do not now matter, in view of the change to the Athlete's defence. He gave a urine sample which he now accepts was his and which, he now accepts, contained amphetamine. The concentration subsequently found in his urine is known and is consistent with the

case advanced by both parties: it is consistent both with deliberate and wrongful ingestion, and with sabotage by spiking. The scientific evidence does not rule out either explanation.

2.8 We have detailed draft (unsigned) witness statements dating from December 2012 and January 2013 from Mr Anderson, two of his trainers and Ms [redacted]. They deal with the circumstances in which the sample was given before the fight. Ms [redacted]'s draft statement was taken by Ms Rebecca Houston of Bridge Litigation UK on 11 December 2012. In it, she made no mention of spiking any drink of Mr Anderson's. Her narrative started with her arrival with Mr Anderson and a trainer at the Sheffield Water Point Arena at about 5.30pm on 20 October 2012 after being picked up from the hotel. She said in her statement that she does not like to watch Mr Anderson fight and waited in a toilet until her brother texted her to say the fight was over. There her narrative ends.

2.9 Mr Anderson defeated Mr Reid and became, as everyone thought, British Super Middleweight Champion. However, it is now common ground that the result must be overturned, and the prize money of £15,000 forfeited and repaid. A coach load of Mr Anderson's friends and supporters had separately arrived from Edinburgh to see the fight. Afterwards, there was a celebration until late into the night at a Sheffield night club. Mr [redacted] was there, as was Ms [redacted] but not Mr Anderson.

2.10 Other friends were there including a woman called Sarah, who was a friend of Ms [redacted], and whom Mr Anderson now says he suspects of being a possible drug user and supplier and source of amphetamine. This, however, is speculation on his part; he does not claim to have any hard evidence to link Sarah with the procurement of amphetamine.

2.11 Mr [redacted] says that while he was standing at the bar at the nightclub quite drunk, his sister Ms [redacted], who also appeared to have had a few drinks, unexpectedly asked him if he wanted some speed. Mr [redacted] says he was surprised because he did not think his sister took drugs and "does not even really drink". He says he declined and thought no more of the incident at the time, that Ms [redacted] did not show him any substance said to be speed, and did not ask him not to tell Mr Anderson about the offer.

2.12 The A and B samples provided by Mr Anderson were taken to the WADA accredited laboratory at the King's College Drug Control Centre, analysed and found to contain amphetamine, a prohibited substance (under S6 of the 2012 Prohibited List (Non-Specified Stimulants)). The Athlete did not have a Therapeutic Use Exemption to justify the presence of the substance in his body. It is common ground

that the scientific evidence before us is that it is not possible to determine the time of ingestion, nor the amount ingested. The laboratory documentation package was dated 7 November 2012.

2.13 Mr Anderson says that about two weeks after the fight, Ms [redacted] asked him how long the test results take to come back, and that he reassured her that there was nothing to worry about. We have heard no oral evidence from Ms [redacted] about that or any other matter.

3. THE CHARGE AND SUBSEQUENT EVENTS

3.1 The Athlete was charged with a doping offence by letter dated 9 November 2012. He was provisionally suspended the same day. He was telephoned by Mr Jason Torrance of UK Anti-Doping; Mr Torrance informed him of the positive test result. He says he was at home when he received the call, and that when Ms [redacted] returned home and Mr Anderson was upset, Ms [redacted] appeared to be surprised to hear about the positive test result and Mr Anderson did not find her reaction in any way suspicious.

3.2 The Athlete appointed Bridge Litigation UK, solicitors in Glasgow, to represent him. They wrote to UK Anti-Doping on 12 November denying the charge and asking for the B sample to be analysed, reserving the right to ask for the presence of a lawyer and toxicologist. They alleged that the chain of custody was suspect. They applied to lift the provisional suspension.

3.3 On 14 December 2012, UK Anti-Doping wrote to the NADP at Sport Resolutions, requesting an arbitration. By then, Bridge Litigation had asked that the application to lift the Athlete's provisional suspension be deferred pending further investigations. It has not been pursued. A telephone hearing was convened and held on 21 December 2012, when the Chairman gave agreed directions and set the hearing date set for 28 February 2013. UK Anti-Doping filed its opening brief on 4 January 2013.

3.4 Ms Rebecca Houston of Bridge Litigation filed a written response on 18 January 2013. In it she asserted that the Athlete had no case to answer. It was contended that the signature in box 32 of the doping control form was not his and he relied on alleged departures from the relevant rules and procedures which were said to raise doubts about the chain of custody and the integrity of the sample. It was suggested that an offence of tampering could be inferred, and implied that the likely culprit was an official acting on behalf of UK Anti-Doping.

3.5 The Athlete deployed in support a report from two handwriting experts, Mr Yeoman Smith and Mr Maurice Rodé. He also relied on a report from Professor David Holt, an expert in bioanalytics for

clinical and forensic toxicology; and on draft witness statements from the Athlete himself, [redacted] and his two trainers. As already noted, Ms [redacted]'s draft statement, taken by Ms Houston, made no mention of any spiking. Mr Anderson says that during this period, Ms [redacted] was being very helpful and cooperative and obliging and seemed to want to participate and cooperate in the process of investigation and evidence gathering as much as possible.

3.6 In its 40 page reply brief dated 5 February 2013, UK Anti-Doping, represented by Mr Taylor and Mr Jamie Herbert, denied that there were material breaches of the procedures for sample collection and testing and in particular relied on (among other things) evidence from the doping control officer and further handwriting expert evidence from Dr Audrey Giles, in opposition to the assertion that the signature in box 32 of the doping control form was not in Mr Anderson's hand.

3.7 UK Anti-Doping also asserted that even if there had been irregularities in the collection and testing procedures, it could not be shown that these could reasonably have caused the adverse analytical finding. UK Anti-Doping relied in this regard on a statement from Professor David Cowan, of the King's College Drug Control Centre, who stated in his report that it was highly unlikely there had been any tampering with the sample after the Athlete had provided it.

3.8 In its reply brief, UK Anti-Doping left to the tribunal the question whether aggravating factors should lead to a ban of up to four years in total rather than two, and accepted that the period of ineligibility should start on 9 November 2012 when the Athlete was provisionally suspended.

3.9 [redacted] On or about 12 February 2013, Bridge Litigation ceased acting for Mr Anderson and were replaced by Fleming & Reid, solicitors in Glasgow.

3.10 Mr Anderson says that in "early to mid February", he told [redacted], Ms [redacted]'s brother, that he had tested positive for amphetamine. He says he did not inform Mr [redacted] about the positive test result until then. Mr Anderson and Mr [redacted] both say that Mr Anderson did not explain to Mr [redacted] about the defences then being run, questioning the authenticity of the signature in box 32 of the doping control form, and questioning the integrity of the testing and collection procedures and the chain of custody.

3.11 Mr [redacted] said that he did not know what amphetamine was and had to look it up on the internet in order to discover that amphetamine was what he knew as the drug speed. He said that after that conversation with Mr Anderson, he recalled having been offered speed by his sister at the night club after the fight and began to wonder if the positive test result had anything to do with his sister. He says he confronted her on the subject face to face in Edinburgh a couple of days later, whereupon she confessed to him that she had put speed in Mr Anderson's coffee the night before the fight (i.e. the night of 19 October 2012).

3.12 Mrs [redacted] stated in her witness statement that she had been initially told by her son Mr [redacted] in February 2013 that Ms [redacted] had confessed to the spiking, asked her daughter about this shortly afterwards, and was told by Ms [redacted] that it was true and she admitted it, not saying much at first about her reason for doing it, and then explaining that she thought Mr Anderson had a girlfriend in Manchester where he was training, and that if she could stop him boxing he would spend more time at home with her and their children.

3.13 Mr [redacted] says he urged her to tell Mr Anderson but as she had not done so by a week or so later, he, Mr [redacted], decided to tell Mr Anderson himself. Mr Anderson and Mr [redacted] say that Mr [redacted] telephoned Mr Anderson (Mr Anderson says it was on 19 February, Mr [redacted] said he thinks it was 20 February) and that Mr [redacted] informed Mr Anderson that his sister, Ms [redacted], had admitted to putting speed in Mr Anderson's coffee the night before the fight (i.e. the night of 19 October 2012). Both men say they went to a police station that same day to make a complaint of criminal conduct and were asked to return a few days later to make formal statements.

3.14 Mr Anderson says he telephoned Ms [redacted] that night and confronted her with the accusation, which [redacted] admitted, blaming Mr Anderson for doing her wrong in the past, by being a bad and frequently absent father and for having a girlfriend at the gym in Preston where he works.

3.15 On 20 February 2013, Fleming & Reid emailed Sport Resolutions as follows:

> We refer to the above in which we act on behalf of Kenneth Anderson. Unfortunately we are not in a position to continue to act on his behalf. We had hoped to receive his further instructions yesterday. These instructions were not forthcoming. In these circumstances we are not prepared to expose ourselves to further expense or to inconvenience parties involved in this process any further and accordingly withdraw from acting on his behalf.

3.16 The next day, 21 February 2013, Mr Anderson emailed Sport Resolutions as follows:

> I'm not quite sure how to go about things right now.
>
> Basically I have spent most of the day at the police station which is why I haven't been in contact with my lawyers, [redacted] ([redacted]) who has gave a witness statement in relation to my sample collection has had what I think can only be described as some form of mental break down and has admitted putting what she calls 'speed' in my coffee on the day before my fight. This has completely knocked me, I honestly can't believe it.
>
> I have obviously contacted the police and reported this, as the crime happened in England the Scottish police have to report to the English police before she will be charged with putting illegal drugs in my drink and being in possession of illegal drugs. She is also refusing to hand back my title belt which needs to be returned to the board of control, my only explanation to her behaviour must be that she has completely lost all sense of reality, I really don't know what is going through her head, she will lose her job over this and end up with a criminal record. [redacted]
>
> I am so upset and honestly speechless as well as embarrassed she has suffered from depression in the past but nothing that would make me think she may be capable of committing such a crime. [redacted] to do this deliberately is unbelievable. I have wasted thousands of pounds on lawyers fees all for nothing.
>
> I don't know what to do and how things will stand, I obviously still want to go before the panel and explain myself, what is the situation with the police being involved? do the police get called as witnesses? Or do I have to request something from them in writing I don't expect the panel to take my word for this, it seems almost to [sic] far fetched to be true.
>
> I would be happy to go ahead with the original hearing date providing someone from either UKAD or the panel can advise me on how things are handled when police are involved, I appreciate these are extremely unusual circumstances.
>
> I am far to [sic] embarrassed to contact my lawyer with this development and have him continue representing me, I am also unable to put anymore money in this now given my current situation. As much as my boxing career and reputation are important to me [redacted]

and this whole case right now is not off (sic) the biggest importance to me. Can you send me the list of lawyers you have who can give athletes advice at reasonable costs.

3.17 The next day, Mr Sturman (and a few days later, Mr Bosworth) very helpfully agreed to represent Mr Anderson on a *pro bono* basis. There was a brief telephone directions hearing on 25 February, at which it was agreed that the hearing would take place on 25 April and the telephone hearing was adjourned to 11 March, when Mr Sturman, having taken full instructions, confirmed that the previously advanced defences were not pursued, and that the Athlete's sole defence was that the positive test result was the consequence of action taken by Ms [redacted] prior to the sample being taken. Revised directions were given.

3.18 Mr Anderson and Mr [redacted] both say they gave formal statements to the Lothian and Borders Police on 23 and 24 February 2013. We have not seen those statements. On 28 February 2013 Mr Anderson and Mr Bosworth attended counsel's Chambers and Miss Bricogne obtained emailed copies of screenshots of text messages from Mr Anderson's iPhone. These messages were said by Mr Anderson to have been exchanged between him and Ms [redacted]. The screenshots are not a complete record of the exchanges and it is not possible to identify the dates on which they were sent, nor the mobile phone number from which any were sent to Mr Anderson's iPhone.

3.19 The text messages partially preserved by Miss Bricogne, if authentic, include an explicit confession by Ms [redacted] that: "I told then [sic – them] the truth actually that I put speed in your coffee why would i lie to the police? It was a mistake sorry I was just so sick of you and your unacceptable behaviour but obviously that doesn't excuse what I done". The message then continues with a denial of stealing Mr Anderson's belt.

3.20 On 28 February and 5 March Mr Bosworth called the number he had obtained (on instructions from Mr Anderson) for Ms [redacted] and left two voice mail messages inviting her to contact him. On 8 March Mr Anderson gave him information about her mental health which led him to refrain from contacting her again.

3.21 Mrs [redacted] told us her daughter had had some sort of breakdown and had been in hospital for about seven to ten days. Mrs [redacted] told us her daughter is now at liberty again but off work, and is a frequent visitor to her mother's house, [redacted].

3.22 Between 28 February and 2 April 2013, Mr Bosworth liaised with the Lothian and Borders Police in Scotland and the South Yorkshire Police in England, in an attempt to obtain information about criminal investigation work taking place, but without success. We therefore do not know exactly what matters are being investigated, although we accept that there is a criminal investigation underway and we accept that Mr Anderson and Mr [redacted] have given statements in that investigation to the effect that Ms [redacted] has admitted spiking Mr Anderson's drink with amphetamine, causing him to test positive for amphetamine. We accept Mrs [redacted]'s evidence that she believes her daughter has admitted as much to the police.

3.23 On 3 April 2013 Mr Anderson told Mr Bosworth that he, Mr Anderson, had inadvertently deleted the text messages which Miss Bricogne had attempted to preserve at the conference at her Chambers on 28 February 2013. Mr Anderson was asked when (in the period from 28 February and 3 April) and how this happened. He said everything was deleted from his I Phone, including other things such as pictures of his children; and that the manufacturer, Apple, had told him it had somehow happened during "rebooting". In re-examination he said that he tried unsuccessfully to recover the information from "the cloud".

3.24 On 4 April 2013 the Athlete's revised written response to the charge was submitted. In it, he withdrew his former contentions, admitted the doping offence and asserted that [redacted] Ms [redacted] had spiked his coffee with speed (amphetamine) the night before the fight, i.e. on 19 October 2012; and that he bore either no fault or negligence, or alternatively no significant fault or negligence for the violation, so that his period of ineligibility should be eliminated or reduced accordingly.

3.25 The revised written response was supported by statements from the Athlete himself, [redacted], Mr Bosworth and Miss Bricogne, and a written character reference from his General Practitioner, Dr Nesta MacKenzie, which also stated that the Athlete was prescribed anti-depressant and anti-psychotic medication in 2010.

3.26 UK Anti-Doping's revised reply was submitted on 19 April 2013. In it, UK Anti-Doping noted that the only issues that remained were (i) whether the Athlete could show, on the balance of probabilities, that the positive test result was the consequence of Ms [redacted] spiking his coffee on the day preceding the fight; and if so, (ii) what degree of fault, if any, should be attributed to the Athlete for the purpose of

eliminating or reducing the length of any ban, pursuant to Article 10.5.1 or 10.5.2 of the Anti-Doping Rules.

3.27 UK Anti-Doping contended that we should approach the spiking claim with caution because of the Athlete's responsibility and the presumption that substances were ingested voluntarily unless otherwise clearly shown. As to fault, UK Anti-Doping submitted it was not possible to establish no fault or negligence because the actions of Ms [redacted] must be attributed to the Athlete for the purpose of applying that test, under Article 10.5.1.

3.28 As regards Article 10.5.2, if the issue should arise, UK Anti-Doping left it to the tribunal to determine, "as the Tribunal sees fit", the length of the period of ineligibility, in the range from one to two years. UK Anti-Doping did not make any case in its revised response for an increased ban of up to four years by reason of aggravating circumstances.

3.29 The hearing took place at the offices of Sport Resolutions on 25 April 2013. The tribunal heard oral evidence from Mr Anderson himself, [redacted] and, by telephone link from Edinburgh, [redacted]. We also had the written witness evidence in the bundle of documents, some of which was superseded by Mr Anderson's changed defence. We had certain written testimonials in support of Mr Anderson's good character.

3.30 At the hearing, we were provided with a written statement from Dr Sandi Lyall, a clinical specialist in high performance sport who informed us of Mr Anderson's dedication to his nutritional and behaviour regime and of her view (though the matter is for us to decide) that he would not voluntarily consume amphetamine. Finally, we heard strongly supportive oral character evidence from Mr Dean Riley who told us of the unfailing help and support he had received from Mr Anderson.

4. THE TRIBUNAL'S CONCLUSIONS, WITH REASONS

4.1 The Athlete admits presence of amphetamine in his sample and therefore admits the doping offence under Article 2.1 of the Anti-Doping Rules. It is therefore accepted by the Athlete that the result of the bout on 20 October 2012 must be disqualified and the prize money forfeited and repaid to the British Boxing Board of Control. The question for the tribunal is whether the Athlete can show that the otherwise mandatory sanction of two years' ineligibility under Article 10.2 can be reduced or eliminated by the application of Article 10.5.

4.2 The first issue under Article 10.5.1 and 10.5.2 is whether the Athlete can show, by a balance of probability (see Article 8.3.2) how the prohibited substance, amphetamine, entered his system. Mr Taylor reminded us of well-known CAS authority establishing that to succeed in this endeavour, the Athlete must show not only the route of administration but also the factual circumstances in which administration occurred.

4.3 Mr Taylor also emphasised by reference to well-known CAS authority that the requirement should be strictly applied, since without clear knowledge of the manner in which a substance entered an athlete's system, it is logically difficult for a tribunal to determine whether the athlete has taken precautions against accidental ingestion or sabotage. He reminded us that in alleged spiking cases, particularly where the substance ingested has clear performance enhancing potential, the tribunal must be especially cautious before accepting an athlete's case because of the obvious potential for collusion, even where the alleged spiker is said to have admitted the spiking.

4.4 Mr Sturman did not take issue with any of the above propositions, which makes it unnecessary to discuss them at length by reference to the authorities relied upon. We agree with them and bear them in mind as we proceed to consider the evidence in the present case.

4.5 Mr Taylor, for UK Anti-Doping made the following evidential points in opposition to the case that deliberate spiking and the circumstances thereof were sufficiently proved on the balance of probabilities:

(1) None of the witnesses from whom we heard knows whether it is true that Ms [redacted] spiked the Athlete's coffee the evening before the fight. The hearsay evidence is of a confession, but there is nothing to corroborate the content of the confession and show that it is true.

(2) Mr Anderson does not claim that he knows of any particular contaminated beverage, still less one with an odd taste. He gives direct evidence only of the opportunity to sabotage his drink, not that the opportunity was taken.

(3) Mr Anderson has vehemently denied that the sample was his, a proposition he now accepts, and is therefore a man who is prepared to make a serious and (Mr Taylor submits) baseless allegation of corruption, namely forgery of his signature. Thus, says Mr Taylor, this is not the first time he has made an allegation of serious wrongdoing against another.

(4) Mr Anderson persists in denying that he signed box 32 of the doping control form and is now therefore claiming that in the same doping test both spiking and forgery of his signature occurred, an inherently improbable proposition amounting (in Mr Taylor's phrase) to "lightning striking twice".

(5) Mr [redacted]'s oral evidence was that when offered speed by his sister, he thought little of it; while his witness statement says he was shocked as he thought his sister was not into drugs.

(6) Mr [redacted]'s evidence, about having to search the internet to find out what amphetamine was, is difficult to reconcile with his claim to have made the link with his sister after being told by Mr Anderson that he had tested positive for amphetamine.

(7) It does not make sense for Mr Anderson to have told Mr [redacted] that he had tested positive for amphetamine without any discussion of the surrounding circumstances, i.e. without telling Mr [redacted] of his then defence that the sample was not his.

(8) It is implausible that Ms [redacted] should have spiked Mr Anderson's coffee the evening before the fight, sat through a drugs test, offered her brother speed later that night and not asked him to refrain from telling Mr Anderson about the offer of speed, knowing that speed would very likely soon be detected in Mr Anderson's sample.

(9) It is implausible that Ms [redacted] should confess to her brother only long after Mr Anderson has been charged, if she already knew that her brother knew about the offer of speed made by her to him in the night club the same night as the fight and the day after the spiking.

(10) The scientific evidence being inconclusive, the tribunal cannot know the time and date of ingestion, nor the dose, thus having no positive scientific evidence to corroborate the spiking claim.

(11) The claim fundamentally rests on the assertion that the absent chief witness, Ms [redacted], has behaved deceitfully by providing a witness statement which concealed the true cause of the positive test result. We were cautioned against believing the evidence of a witness who must have deceived at least once, particularly in her absence.

4.6 Mr Sturman for the Athlete emphasised the following main points in relation to the evidence:

(1) although there was no direct evidence from Ms [redacted] on the spiking issue, there was clear evidence from three witnesses (her mother, brother and [redacted]) that she had confessed;

(2) the text messages were direct evidence of her confession in her own words; it is not the Athlete's fault that better evidence of her confession is not available through lack of cooperation by the two police forces;

(3) Mr Anderson was a witness of truth who should be believed; he was prepared to speak against his own interest where truth demanded it: he avoided "easy lies" such as that he knew Ms [redacted] had confessed to the police (he said he did not know) or that he recalled bitter tasting coffee at the hotel;

(4) Mrs [redacted] had no reason to invent a confession from her daughter, particularly after the difficulty she had endured through her other daughter's problems leading to her having to look after her older daughter's children.

(5) There was no reason why Mr [redacted] should have been told about the initial defences relating to the contested signature and contested chain of custody. His denial that he knew of those defences is not implausible.

(6) Mr [redacted] also avoided the "easy lie"; for example, he could have given express evidence that Sarah was the source of the speed, but instead said he did not know if she was or not.

(7) Mr Anderson knew that he would be tested and faced almost certain detection if he should dope himself with amphetamine. That makes deliberate doping inherently unlikely, particularly given his concern not to interfere with his anti-depressant medication.

(8) It would be speculation to theorise about why Ms [redacted] should help the defence if her objective had been to stop Mr Anderson from boxing; there are plenty of plausible explanations; for example, she may have felt remorse at what she had done; but the tribunal need not speculate about her reasons.

(9) The cumulative effect of the evidence before the tribunal was sufficient to discharge the Athlete's burden on the balance of probabilities.

4.7 We have come to the conclusion that the Athlete's evidence is not strong enough to prove on the balance of probabilities the case advanced by him, namely that amphetamine entered his system by drinking a cup of coffee deliberately laced with speed by Ms [redacted] at the Jury's Inn, Sheffield, during the afternoon or evening of 19 October 2012. We do not rule out the possibility that this may have happened, but we are clear that it is not proved by a balance of probability.

4.8 We find the points made by Mr Taylor to be considerably more persuasive than those deployed by the Athlete, notwithstanding the eloquence with which Mr Sturman advanced his counter arguments. We are particularly troubled, also, by the absence of any convincing explanation for the alleged inadvertent deletion of the text messages which, if they could have been authenticated, would have provided direct evidence of a confession. We were not satisfied with Mr Anderson's explanation on this important point.

4.9 If we had had direct evidence that a confession was made in the terms of the text messages, and that the text messages had been sent from Ms [redacted]'s telephone, we might well have been inclined to reach the further conclusion that the confession was true. As it is, we are strongly influenced by the absence of any evidence from any witness which corroborates the truth of Ms [redacted]'s confession, assuming it was made.

4.10 It should be clearly understood that we are not required to make any positive finding that the Athlete deliberately doped himself; nor that he conspired to fabricate false evidence and provide it to the police and this tribunal. It is not necessary for us to make those findings in order to determine the issue as to whether the onus of proof imposed by Article 8.3.2 of the Anti-Doping Rules is discharged or not. We find that it is not discharged.

4.11 It follows that the Athlete is unable to bring himself within the protection of Article 10.5.1 or 10.5.2 for the purpose of eliminating or reducing the period of ineligibility, which must be two years. UK Anti-Doping accepts that the period should start on 9 November 2012.

4.12 It is therefore unnecessary to decide the second issue which is whether the Athlete would be able to show no fault or negligence, or no significant fault or negligence. We heard full argument on this point, written and oral. We do not need to express a concluded view on it, but in case this matter may go further and in case it assists the parties, we will briefly express our views on the issue which are as follows.

4.13 UK Anti-Doping argued that an act of deliberate sabotage by a vengeful spouse or partner could not lead to a finding of no fault or negligence, because the commentary on the WADA Code is given mandatory effect by Article 24.2, which provides that "[t]he comments to the Code shall be used to interpret the Code". Mr Taylor submitted that the commentary to Article 10.5 of the Code included the proposition, which the tribunal must not disregard, that

> "a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances .... sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink)".

4.14 There was a debate in written submissions at the hearing (continued in emailed submissions sent after the hearing) concerning the status of the comments to the WADA Code and the provision in the Anti-Doping Rules in play here at Article 1.5.4 which includes the words: "[t]he comments annotating various provisions of the Code shall be used, where applicable, to assist in the understanding and interpretation of these Rules."

4.15 The parties cited CAS authorities in support of their respective submissions. Mr Sturman relied on the observation in the *Advisory Opinion, FIFA and WADA*, CAS 2005/C/976 and 986, at paragraph 73, that "certain examples listed in the comment to art. 10.5.2 of the WADC as cases of 'no significant fault or negligence' may reasonably be judged as cases of 'no fault or negligence'".

4.16 Mr Taylor submitted that this was *obiter* and unsound, and was a remark given in an advisory opinion, not an arbitration award. He relied on *WADA v. Nilforushan and FEI*, CAS/2012/A/2959, judgment of 30 April 2013 (after the hearing before us), at paragraph 8.22:

> "The Panel agrees with the FEI's submission that the FEI Tribunal fell into error when it considered the effect that any ban could have on Mr Nilforushan's sporting career. As is made expressly clear by the commentary to Article 10.5 ADRHA (which by Article 19.6 ADRHA is to be used to interpret the ADRHA), such considerations are not a relevant factor in the Article 10.5.2 ADRHA assessment."

4.17 We do not need to resolve the issue as to the status and effect of commentary to the provisions of the WADA Code, and the status and effect of CAS decisions (of one type or another) bearing on that issue. We would have been unlikely to accept the proposition that the commentary is binding in the same way

and to the same extent as the rules themselves. It is very difficult to treat as having binding normative effect statements which are mostly factual examples of hypothetical cases, given that every case is different.

4.18 On the other hand, we can see some force in the suggestion that in a case which is genuinely on all fours with one of the factual examples given in the commentary, a tribunal should be, at least, very slow to treat itself as free to reach a different result. Had we had to decide the issue, we would have been unlikely to have accepted, on the facts here, that Mr Anderson was without any fault or negligence at all. In short, he did not take precautions to see what was being put in his coffee during the afternoon and evening before the fight.

4.19 As UK Anti-Doping accepted, Mr Anderson might well have been able to establish no significant fault or negligence, opening the way to a period of ineligibility reduced by up to one year, in the range from one to two years, had his primary "spiking" contention succeeded on the balance of probability. However, we do not need to make any positive finding to that effect, and we do not do so.

4.20 In the event, the Athlete is unable to bring himself within Article 10.5 of the Anti-Doping Rules and the period of ineligibility must be two years for the reasons given above. We do not think it would be right to impose an additional period of ineligibility up to a total of four years by reason of aggravating circumstances, given that in its revised response, UK Anti-Doping did not invite the tribunal to make a finding of aggravating circumstances (although it had raised the issue in its original response), and made no positive case that the confession of Ms [redacted] was fabricated in order to mask a case of deliberate doping by the Athlete.

5. SUMMARY: THE TRIBUNAL'S DECISION

5.1 Accordingly, for the reasons given above, the Tribunal decides as follows:

(1) The doping offence under Article 2.1 of the Anti-Doping Rules has been established.

(2) The period of ineligibility is two years from 9 November 2012, the date with effect from which the Athlete was provisionally suspended.

(3) The Athlete's results from the bout on 20 October 2012 are disqualified.

(4) The prize money of £15,000 must be repaid to the British Boxing Board of Control.

6. **RIGHTS OF APPEAL**

6.1 In accordance with Article 13.4 of the Anti-Doping Rules and Article 12 of the Procedural Rules, Mr Anderson and the other parties named in Article 13.4 have a right of appeal to the NADP appeal tribunal.

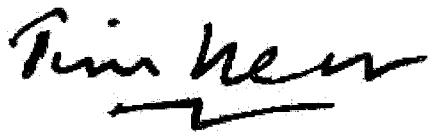
6.2 In accordance with Article 13.7 of the Anti-Doping Rules and Article 12.5 of the Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

Tim Kerr QC

Dr Kitrina Douglas

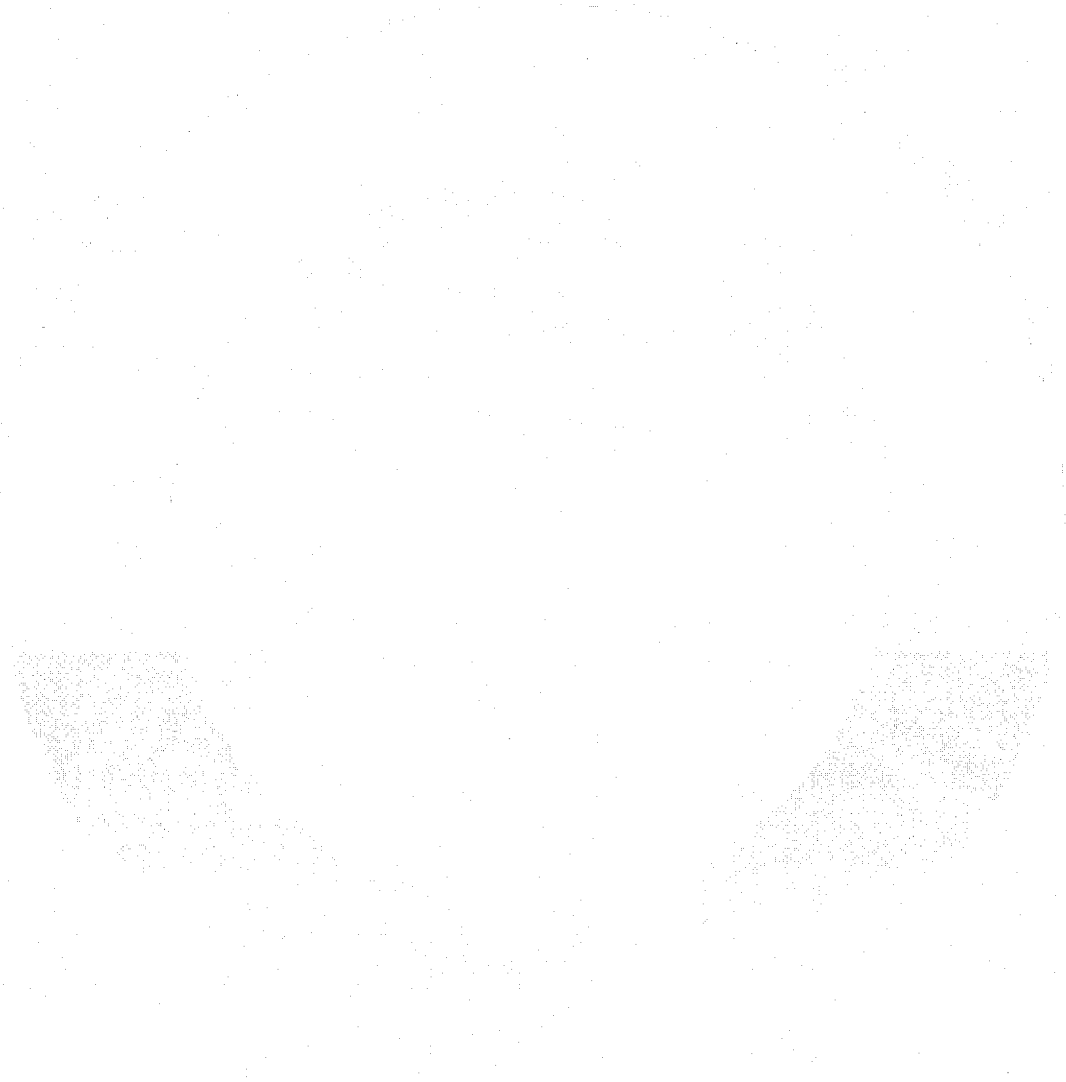
Dr Terry Crystal

Signed on behalf of the Tribunal:



Chairman

Dated: 15 May 2013



Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk