No.: DT-13-0198

In the matter of the Canadian Anti-Doping Program;

And in the matter of an anti-doping rule violation by Nathan Zettler asserted

by

The Canadian Centre for Ethics in Sport;

And in the matter of a hearing before the Doping Tribunal.

REASONS FOR DECISION

Introduction

I have been appointed as an arbitrator in this matter in which the Canadian Centre for Ethics in Sport ("CCES") alleges anti-doping violations on the part of Mr. Nathan Zettler (the "Athlete"). The allegation of anti-doping violations is levelled as a consequence of the Athlete's January 2013 guilty pleas and subsequent convictions on 3 counts of possession and possession for the purpose of trafficking in anabolic steroids.

On September 8, 2014, after considering the relevant evidence and legislation and the submissions of CCES, I concluded that anti-doping violations had been made out and imposed a sanction of four years ineligibility commencing on that date. My reasons for that decision follow.

The CCES is an independent, not for profit organization that promotes ethical conduct in Canadian sports. It also maintains and carries out the Canadian Anti-Doping Program ("CADP"). At the relevant time, the Athlete was a football player in Canadian Interuniversity Sport ("CIS") which adopted the CADP on December 2, 2008 and, as such, he is subject to the rules of the CADP.

Pursuant to Rule 7.87 of the CADP, the Sport Dispute Resolution Centre of Canada ("SDRCC") has the jurisdiction to constitute and administer a Doping Tribunal.

In asserting an anti-doping violation, CCES relies on two affidavits, dated April 30 and July 30, 2014, both deposed by Kevin Bean, manager of compliance and procedures with CCES (the "First and Second Affidavit")

Notice to The Athlete

Since CCES first alerted CIS to the possibility of anti-doping violations in April 2010, the Athlete has failed to respond to correspondence or participate in any fashion with the process.

The First Affidavit sets out the specifics of the various attempts to contact the Athlete:

On July 16, 2013 after being advised that the Athlete had pleaded guilty to the various counts of possession and possession for the purpose of trafficking, CCES issued a Notice of Doping Violation to CIS. On the same date, the SDRCC sent an information package to the Athlete's then legal representative informing him of the Notice and requesting that, on or before July 22, 2013, he advise whether the Athlete wished to waive or exercise his right to a hearing. An administrative conference call was set for July 19, 2013. No response was received from the Athlete or his legal representative to either of these documents. At some point shortly thereafter, SDRCC was advised that the Athlete was, in fact, in Maplehurst Regional Correctional facility and a further information package dated July 23rd was prepared by SDRCC. The July 23 information package was identical in all major respects to that of July 16, with the exception that the administrative call was rescheduled to July 30 and the Athlete was asked to advise if he was still represented by counsel. A copy of the Notice of Doping Violation was enclosed with the package. Despite receiving confirmation of delivery of the information package to the Maplehurst facility on July 24th, the Athlete did not attend the Conference call on July 30 or provide any response to the Notice of Doping Violation.

A second round of attempts to contact the Athlete began in January 2014, when CCES became aware that he had left Maplehurst and was living at a different address. A new Notification of Doping Violation was prepared which was identical in all respects to the prior notice of July 16, 2013. A number of unsuccessful attempts were made to deliver this document to the new address. Eventually, on March 10, 2014, SDRCC issued a second information package which detailed the attempts to contact the Athlete, set an administrative teleconference for March 27, 2014 and once again requested that the Athlete advise whether he wished to exercise or waive his right to a hearing. On March 12, 2014, the SDRCC was advised that the Athlete had been served with the second information package, the Notification of Violation and related documents. An Affidavit of Service was provided by the process server.

Once again the Athlete failed to respond to either the Notification or the information letter nor did he attend the teleconference on March 27th.

Rule 7.23 of the CADP provides that a Doping Tribunal must hold a hearing to impose the consequences provided under the Rules unless the Athlete waives the right to a hearing. In the absence of any communication from the Athlete and specifically a waiver of his right to a hearing, a Doping Tribunal was convened and I was appointed as the arbitrator. Prior to convening a preliminary teleconference, I requested that CCES compile a list of all attempts to contact the Athlete and, as noted, those efforts were detailed in the First Affidavit.

A teleconference was scheduled on May 28, 2014. At that time I had had the opportunity to review the First Affidavit and to consider section 7.5 of the Canadian Sport Dispute Resolution Code which provides :

> Provided that reasonable efforts have been made to contact the Person whom the CCES asserts to have committed a violation of the anti-Doping Program, if that person is unreachable, or is avoiding contact, or has not confirmed receipt of the notification from CCES and/or the SDRCC which addresses that person's right to a fair hearing and the consequences of not participating at the hearing, the Panel may decide that the hearing will proceed without the participation of such Person.

I concluded that reasonable efforts had been made to contact the Athlete to advise him of his right to participate in the hearing and ordered that the hearing proceed in his absence and be conducted by way of written submissions. I also ordered that the Athlete be provided with a copy of the Second Affidavit and CCES's written submissions and be given a final opportunity to respond to those submissions within 7 days of their service upon him.

On July 30, 2014, CCES filed the Second Affidavit and written submissions. Service of these documents was effected on the Athlete on August 11, 2014, but once again no response was received from him and, accordingly, the hearing proceeded in his absence.

The Evidence and Submissions by CCES

Exhibit 5 to the Second Affidavit comprises the entire file of the Ontario Superior Court of Justice relating to the criminal charges filed against the Athlete. Those records show that on June 21, 2013, the Athlete pleaded guilty to *inter alia* one count of possession, and two counts of possession for the purpose of trafficking in anabolic steroids. Convictions were registered on June 21, 2013. There have been no appeals of those convictions.

Pursuant to CADP Rule 7.84, the registered convictions constitute irrebuttable proof that the Athlete both possessed and trafficked or attempted to traffick in anabolic steroids, which are banned substances according to the 2011 WADA list. As such, on the evidence I am satisfied that that CCES has met its burden of establishing that the Athlete has committed an anti-doping violation under CADP Rules 7.34 (possession) and 7.36 (trafficking or attempted trafficking).

Sanction

This is the Athlete's first violation. Rule 7.38 provides that for a first anti-doping violation involving possession, the period of ineligibility shall be two years unless the existence of "exceptional circumstances" can be demonstrated.

Rule 7.40 provides that for a first anti-doping violation involving trafficking, the period of ineligibility shall be a minimum of four years up to a lifetime unless the existence of "exceptional circumstances" can be shown.

Rule 7.54 provides that when there are violations of both possession and trafficking, the violation that carries the most severe sanction must be used to calculate the appropriate period of ineligibility.

The Athlete has the burden of establishing the existence of "exceptional circumstances" which may reduce the applicable sanction. Since he has failed to adduce any evidence and in particular any evidence which would establish the existence of exceptional circumstances, I am bound to impose the minimum sanction of a four year period of ineligibility pursuant to Rule 7.40. CCES submits that this minimum sanction is both fair and proportionate to the conduct that occurred. I agree. Accordingly, in the absence of any submissions from the Athlete and having considered all of the admissible evidence, on September 8, 2014 I imposed a sanction of four years with the period of ineligibility commencing on that date.

No submissions have been made on costs and I make no order.

Dated at Vancouver, this 17th day of September, 2014.

Barbara Cornish, Arbitrator