

**IN THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT**

**ANTI-DOPING DISCIPLINARY COMMITTEE**

HELD AT HOLIDAY INN ROSEBANK (JOHANNESBURG)

In the matter of: Mr D.J La Grange

Date of Hearing: 17 March 2015

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**RULING**

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**1. INTRODUCTION**

1.1 The South African Institute for Drug Free Sports ("SAIDS") brought charges against the Athlete Mr DJ La Grange ("the athlete") for adverse analytical findings.

1.2 The hearing was held on 17 March 2015 in Johannesburg and the athlete was legally represented during the hearing.

**2. COMPOSITION OF THE PANEL**

2.1 The Disciplinary Committee was appointed by SAIDS as a statutory body created by section 2 of South African Institute for Drug-Free Sport Act 14 of 1997, as amended in 2005 when SAIDS accepted the World Anti-doping code. The SAIDS Anti-doping Rules which were Published by SAIDS are applicable to the present proceedings. ("**the Rules**")

2.2 The SAIDS Anti-doping Disciplinary Committee ("**the Committee**") has been Appointed in terms of Article 8.1 of the Rules. The committee consisted of Mr. Mandla Tshabalala, Dr. Andy Branfield and Mr Joe Carrim.

2.3 The pro-forma prosecutor for SAIDS was Mr. Rahidien Cullis.

### **3. APPLICABLE RULES**

3.1 The prosecutor presented to the panel and the athlete that the rules to dispense with during the proceedings shall be those of SAIDS.

### **4. CHARGE**

4.1 The charge against Mr Daniel Jakobus La Grange ("**the athlete**") is contained in a letter dated 12 March 2015, which letter was addressed to the athlete. The charge preferred against the athlete reads as follows:

*"You are formally charged with an anti-doping rule violation in terms of Article 2.1 of the 2009 Anti – Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 15 July 2014, you provided a urine sample (2823836) during an out-of-competition test. Upon analysis, the South African Doping Control Laboratory reported the presence of prohibited substances in your urine sample. The substances identified in your sample were Hydrochlorothiazide. Hydrochlorothiazide is categorised under **Class S5 Diuretic and Other Masking Agents** on the World Anti-Doping Code 2014 Prohibited List International Standard.*

4.2 The charge emanate from an Adverse Analytical Finding from the South African Doping Control Laboratory. The report of the finding was communicated and addressed to the Athlete on 19 February 2015.

## **5. PLEA**

5.1 The Athlete pleaded guilty to the charge.

## **6. PLEA EXPLANATION AND EVIDENCE**

6.1 During the hearing the athlete's legal representative read out a plea explanation.

6.2 Of importance in this plea explanation is that the athlete concedes to have ingested medication which contains the prohibited substance.

6.3 The athlete stated that he experienced back pains and had difficulties in passing urine, as a result he attended to the pharmacist who gave him medication over the counter.

6.4 Interestingly, the pharmacist advised the athlete against taking the medication as it contained banned substances, the athlete proceeded to taking the medication.

6.5 The pharmacist further advised the athlete that the medication would only be present in his system for approximately two days.

6.6 the athlete informed the committee that he always competes in the category of under 60kg

6.7 On being asked of his age, the athlete stated that he was 23 years old and studying part-time with UNISA.

6.8 The Athlete further stated that he has been competing in Judo for the past thirteen (13) years internationally and that he was once tested and he tested negative to banned substances.

**PLEASE TAKE NOTE SOME OF THE EVIDENCE COULD NOT HAVE BEEN REFERRED TO IN THIS RULING, THE ENTIRE TRANSCRIPT COULD BE OBTAINED FROM SAIDS.**

- 6.9 In its closing argument, SAIDS stated that they would pray for a maximum sanction of two years ban on the athlete from the date of notification which is 19 February 2015.
- 6.10 Further that the Athlete possess wealth of experience and that he was extremely negligent by ignoring the advice of the pharmacist and failed to consult a medical doctor.
- 6.11 SAIDS further stated that the Athlete failed to identify the substance he has ingested as he was tested seven (7) days after he ingested the substances which last for a period of two (2) days in the system.
- 6.12 On the other hand the athlete argued that the substance could have stayed in his system for a longer period as that was the only substance he took.
- 6.13 According to SAIDS an Athlete is liable for what enters his body and made reference to Article 2.1.1 and 2.1.2 of the SAID Anti-Doping Rules of 2009.
- 6.14 the Athlete in closing and in addressing the sanctions stated that he was able to identify the substance and that he further able to show that he had no intention to enhance his performance by ingesting the substance. he therefore pleaded that article 10.4 should be applicable and that the committee should consider imposing a sanction of a reprimand or no period of ineligibility.
- 6.15 The Athlete further argued that he bears no fault or negligence because he is young and inexperienced. Therefore the athlete pleaded that the committee should impose a sentence of a reprimand or no period of ineligibility.

## **7. BURDEN OF PROOF**

7.1 The SAIDS rules places a burden of prove on the prosecution to proof to the comfortable satisfaction of the hearing panel, that the athlete did consume/use a banned substance. In terms of Article 3.1 of the SAIDS anti-doping rules:

*“SAIDS has the burden of establishing that an anti-doping violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less that proof beyond reasonable doubt. Where the Anti-Doping rule places burden of proof upon the athlete or other person alleged to have committed an anti-doping rules violation rules to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by balance of probability, except as provided in Article 10.4 and 10.6 where the athlete must satisfy a higher burden of proof”.*

7.2 Article 3.2 mentions the methods of establishing facts and presumption, and Article 3.2.1 specifically states that “WADA accredited laboratories are presumed to have concluded sample analysis and custodial procedure in accordance with the international standard for Laboratories”.

## **8. THE LAW**

8.1 The charge against the athlete constitutes a breach of Article 2.1 of the South African Institute for Drug-Free Sport, which rule states that “The presence of a prohibited substance or its Metabolites or Makers in the Player’s sample.” Article 2.1.1 specifically states that:

*"It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Makers 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 rule violation under Article 2.1"*

- 8.2 Article 2.2 which is headed "Use or attempted Use by an Athlete of a Prohibited Substance or a prohibited Method". In particular Article 2.2.1 states that:

*"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or prohibited Method."*

- 8.3 The above provision is founded on strict liability that is applicable to anti-doping violations.
- 8.4 Athletes are required to adhere to a standard set by the anti-doping rules on the basis that they could be held accountable for what enters their systems and the rules does not in any way accept ignorance of the anti-doping provisions or prohibited list.
- 8.5 The Athlete has pleaded guilty to an anti-doping offence, however the Athlete has argued that there are exceptional circumstances which, if argued successfully, could justify the elimination of the period of ineligibility.
- 8.6 To be able to address the committee and to be successful in reducing the period of ineligibility, the Athlete needed to address the committee on Article 10 of the SAID anti-doping rules which deals with sanctions.



8.7 Specifically, if the athlete want to be successful in his quest for elimination or reduction of period of ineligibility, the athlete must address the committee on Article 10.4 which deals with elimination or reduction of the period of ineligibility for specified Substance under the Specific Circumstances

8.8 Article 10.4 Specifically states that:

*“Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Athlete’s sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Article 10.2 shall be replaced with the following: first violation: at minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two (2) years ineligibility.”*

8.9 The above provision places the onus on the Athlete to specify the Substance which entered his body and that such substance was not to enhance his performance, taking into account Article 2.1 which places strict liability on what enters the Athlete’s body strictly on the Athlete.

8.10 Firstly the Athlete must identify the Prohibited Substance and secondly the Athlete must prove that the very same Prohibited Substance was not intended for performance enhancement. As it was stated in the **Dimatar Kutrovsky v ITF**<sup>1</sup> that:

*“and athlete does not need to prove an intent to enhance his sport performance, since he cannot be said to this intent if he is not aware that the product he is taking contains specified substance.”*

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<sup>1</sup> CAS 2012/A/2804 Dimatar Kutrovsky v ITF, par 9.12

8.11 This simply means that if an Athlete fails to specify the substance, there is no reason to further enquire whether it was for performance enhancement as the provision of Article 10.4 specifically says “such” as a follow up to a specified substance.

8.12 Article 10.5.1 addresses the Elimination or reduction of period of ineligibility based on exceptional circumstances and Article 10.5.1 states that:

*“If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of ineligibility shall be eliminated. When a Prohibited Substance or its Markers or its Metabolites is detected in an Athlete's Sample in violation of the Code Article 2.1 (Presence of Prohibited Substance), there shall also establish how the Prohibited Substance entered their system in order to have the period of ineligibility eliminated. In the event this Article is applied and the period of ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of ineligibility for multiple violations under Article 10.7.”*

8.13 for the committee to consider elimination or reduction of period of ineligibility, Article 10.5 sets two conditions which the Athlete must meet and the conditions are the following:

8.13.1 that the Athlete must establish how the Prohibited Substance entered his system; and

8.13.2 That the Athlete must establish that he bears No Fault or Negligence.



8.14 The Athlete is required to prove that he bears no fault or negligent. The anti-doping rules required an Athlete to exercise a standard of care and to know exactly what enters his body.

8.15 it was held in **Kowalczyk v FIS**<sup>2</sup> that:

*“the duty of care resting upon any 22 year old athlete engaged in world class competition requires, at the very least, that she provide her treating physician a copy of the 2005 Prohibited List and that she enquire with the doctor whether any of the medication and treatments which he/she prescribes contain substances contained on the list.”*

8.16 In *casu*, the athlete identified the substances and alleged that he ingested such substance seven days prior to be tested, however he was told that the substance only stays for two days in the system and same was confirm by Dr Branfield a committee member.

8.17 Having conceded to the fact that the substance only stays for 2 days in the system and confirmation from Dr Branfield, and the fact that the athlete was tested seven days after taking the substance, the committee came to the conclusion that the Athlete has in fact failed to identify the substance he ingested as the substance he ingested lasted for a period of two days in his system. Therefore there was no need to further enquire whether such substance was used to enhance performance

8.18 The Athlete is required to prove that he bears no fault or negligent, in this case no evidence was led that might have swayed the committee to consider a sanction of reprimand or no period of ineligibility.

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<sup>2</sup> CAS 2005/A/918 at par 12.5.2

8.19 If the Athlete, *in casu*, persists that the substances he alleges to use was the one that causes the analytical finding, he was further negligent as he was informed by the pharmacist that the medication contains prohibited substances, he nevertheless proceeded to ingest the medication, therefore he was negligent.

8.20 Having failed to meet the aforesaid requirements it is the finding of the committee that SAIDS has proved its case to the comfortable satisfaction of the panel, therefore the Athlete is hereby found guilty as pleaded.

## **9. SANCTIONS**

9.1 In imposing the sanction, the panel was guided by Article 10.2 which is headed

*“Imposing of ineligibility for Prohibited Substances and Prohibited Methods.”* It specifically states that *“The period of ineligibility imposed for the violation of the Code Article 2.1(Presence of Prohibited Substance or its Metabolites or Markers) Article 2.2 (Use or Attempted Use of the Prohibited Substance or Prohibited Method) and Article 2.6 (Possession of Prohibited Substances and Method) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Article 10.4 and 10.5, or the conditions for increasing the period of ineligibility, as provided for in Article 10.6, are met: First violation: two (2)years-ineligibility.”*

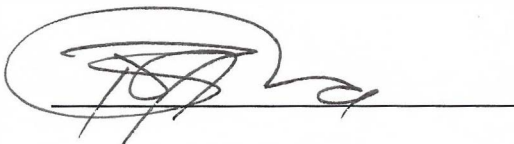
9.2 After the committee thoroughly deliberated on the possible sanction, the panel could not find any condition raised by the athlete for elimination or reduction of period of ineligibility.

- 9.3 The committee was to decide the commencement of the suspension as the athlete was tested on 15 July 2014 and was only notified on 19 February 2015.
- 9.4 Of interest is the fact that the Athlete continued to compete at international level and, as argued by prosecution, that he was not prejudiced and as a result the period of ineligibility should commence from 19 February 2015, which is a date of notification.
- 9.5 The Athlete conceded that immediately after the test was conducted, he continued competing even at international level and if he was notified on time he would not have competed and in fact his suspension would be nearer to end.
- 9.6 The committee found that the athlete did not suffer any prejudice as he continued to compete and in the process won competitions which SAIDS does not argue for disqualification of such results.

The Committee therefore unanimously came to the following sanction:

*That the Athlete is hereby suspended for a period of two (2) years from the date of the notification which is 19 February 2015.*

Date: 17 March 2015

A handwritten signature in black ink, appearing to be 'M. Tshabalala', is written over a horizontal line. The signature is enclosed in a hand-drawn oval.

Mr. Mandla Tshabalala

**For and on behalf of  
Dr. Andy Branfield and Mr Joe Carrim**