

**IN THE MATTER BETWEEN:-**

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

and

**MR DEEN ZAIN MAGMOED**

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**PRINCIPLE SUBMISSIONS**

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**Introduction**

1. These proceedings are governed by the South African Institute for Drug Free Sport Anti-Doping Rules 2015 (**"the Anti-Doping Rules"**). Federations and athletes are subject to the jurisdiction of SAIDS and are required to comply with the Anti-Doping Rules as a matter of law and contract.<sup>1</sup>
2. The athlete Mr Deen Magmoed ( "Mr Magmoed" ) is an Ice Hockey player<sup>2</sup> who competed in a league match on the 7 August 2015 and provided a urine sample 39 230 57.
3. Urine sample 39 230 57 returned an adverse analytical finding ( "AAF" ) from the WADA accredited laboratory in Cologne, German for Carboxy THC at a level of 366ng/ml, which is greater than the decision limit of 180ng/ml.<sup>3</sup>

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<sup>1</sup> The South African Institute for Drug Free Sport Act 14 of 1997 and the Ant-Doping Rules - see Article 1

<sup>2</sup> He participates under the auspices of the South African Ice Hockey Association

<sup>3</sup> See Cologne Laboratory rapport p.5-6

4. The notification letter dated the 16 November 2015 of Mr Magmoed was delivered by SAIDS as well as forwarded to him by the president of the South African Ice Hockey Association ("SAIHA") Mr Stevens on the 17 November 2015.<sup>4</sup>
5. The notification letter *inter alia* sets out the charge under Article 2.3 of the SAIDS Rules 2015 and informs the athlete that he has been provisionally suspended.<sup>5</sup>
6. Mr Magmoed voluntarily handed up an Affidavit after his rights were duly explained to him which he accordingly understood, he acknowledged ingesting marijuana in the week running up to being tested.
7. Mr Magmoed acknowledged the adverse analytical finding for the presence of cannabinoids in his urine sample, collected from him during an in-competition test on the 07 August 2015 at 20h38pm.
8. Furthermore he waived his right to have the "B" sample analysed.
9. Article 2.1 of the SAIDS Anti-doping rules 2015 provides as follows:-

**"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample**

- 2.1.1** It is each Athlete's personal duty to ensure that no *Prohibited Substance* enters his or her body. Athletes are responsible for any *Prohibited Substance* or its *Metabolites or Markers* 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 under Article 2.1.
- 2.1.2** Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following :presence of *Prohibited Substance* or its Metabolites or **Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed** ; or , where the Athlete's B Sample confirms the presence of the *Prohibited Substance* or its Metabolites or Markers found in the Athlete's A Sample; or where the Athlete's B Sample is analysed and the analysis of the Athlete's B sample confirms the presence of the Prohibited Substance or its Metabolites or Markers

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<sup>4</sup> See hearing bundle email from Jerry Stevens p.7

<sup>5</sup> See hearing bundle p1-2 Notification Letter dated 16 November 2015

found in the Athlete's A Sample; or where the Athlete's B sample is split into two bottles and the analysis of the second bottle confirms the presence of the *Prohibited Substance* or its Metabolites or Markers found in the first bottle".

10. In casu the athlete waived his right to have his B-sample tested<sup>6</sup> and admitted to having ingested the prohibited substances.<sup>7</sup>

11. When it comes to the issue of proof the Anti-Doping Rules provide: -

### **"3. PROOF OF DOPING "**

#### **3.1 Burdens and Standards of Proof**

SAIDS shall have the burden of establishing that an anti-doping rule 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, which is made.**

This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

#### **3.2 Methods of Establishing Facts and Presumptions**

Facts related to anti-doping rule violations may be established by any reliable means, including admissions.

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<sup>6</sup> Refer to paragraph 5 of the annexed affidavit of Mr.Magmoed in bundle.

<sup>7</sup> Refer to paragraph 6 of the annexed affidavit of Mr.Magmoed in bundle.

12. In light of the presumptions that are applicable and Mr Magmoed's submission in his affidavit that he ingested the Cannabinoids<sup>8</sup> at a bachelor's party there is no basis for a finding other than that this constitutes an anti-doping violation.

13. SAIDS has consequently established an anti-doping rule violation to the comfortable satisfaction of the panel.

### **What is the appropriate sanction?**

14. The sanctions that fall within the competence of the tribunal are dealt with in Article 10 of the Anti-Doping Rules. Beginning with the question of ineligibility:-

15. Article 10.2.1 of the SAIDS Rules 2015 states that:-

"The period of ineligibility **shall** be four years where:

The anti-doping rule violation involves a **Specified Substance** and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional"

16. Article 10.5.1 deals with the **reduction of sanctions for specified substances** or contaminated products for violations of Article 2.1, 2.2 or 2.6. It states that:

#### 10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, **at a minimum, a reprimand** and no period of ineligibility, and **at a maximum, two years** of ineligibility, depending on the Athlete's or other Person's degree of Fault.

The WADA Code 2015 comments on p138 that when dealing with No Significant Fault or Negligence and Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance.

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<sup>8</sup> Refer to paragraph 6 of the annexed affidavit of Mr Magmoed in bundle and paragraph 7 of the Principle Submissions of SAIDS

17. Administrative action must be lawful, reasonable and procedurally fair.<sup>9</sup> For the panel to be in a position to consider a reduction would require that the athlete in question establish that there was not intent. Mr Magmoed has asserted that he took the specified substance, marijuana, at a bachelor's party preceding the sporting event he was tested. The use thereof being clearly unrelated to sport performance.

18. That being the case, the period of ineligibility should be 4 (**FOUR**) months.

19. Mr Magmoed was provisionally suspended from 16 November 2015 and therefore the sanction should run from said date until the 16 March 2016.

20. In addition to the issue of ineligibility other sanctions required by the Anti-Doping Rules include:-

20.1 the disqualification of Mr Magmoed's individual results obtained in the event

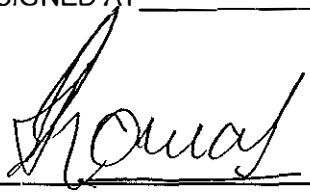
including the forfeiture of all medals and prizes( if any).

20.2 the publication of the sanction.

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<sup>9</sup> Section 33 of the Constitution of the Republic of South Africa, 1996 read with the Promotion of Administrative Justice Act 3 of 2000

DATED AND SIGNED AT CAPE TOWN ON THE 23<sup>rd</sup> DAY OF FEBRUARY 2016.



1. Jerome Vincent Thomas - Tribunal Chairperson

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

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2. Pierre Viviers - Tribunal Member

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

\_\_\_\_\_

3. Norma Nonkonyana - Tribunal Member

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

1. Jerome Vincent Thomas - Tribunal Chairperson

DATED AND SIGNED AT Stellenbosch ON THE 23<sup>rd</sup> DAY OF FEBRUARY 2016.



**Dr Pierre Viviers**  
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2. Pierre Viviers - Tribunal Member

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

3. Norma Nonkonyana - Tribunal Member

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

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1. Jerome Vincent Thomas - Tribunal Chairperson

DATED AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF FEBRUARY 2016.

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2. Pierre Viviers - Tribunal Member

DATED AND SIGNED AT OBSERVATORY ON THE 18 DAY OF FEBRUARY 2016.



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3. Norma Nonkonyana - Tribunal Member