

SAIDS\determination\said-s-gail foxcroft  
MH/dmv  
13072016

**In the matter between :**

**South African Institute for Drug-Free Sport (SAIDS)**

**Complainant**

**and**

**Ms Gail Foxcroft**

**Respondent**

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**DETERMINATION**

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**1. CHARGE :**

The Respondent, competing at the South African Derby Championships on 4 October 2015, provided urine samples (3927751 and 3928879), both of which, upon analysis by the South African Doping Control Laboratory at the University of the Free State ("the Laboratory"), on 7 October 2015, found the presence in these "A" samples of **Phentermine**, a Prohibited Substance. This constituted an adverse analytical finding, which is, *prima facie*, a breach of Article 2.1 "the presence of a Prohibited Substance of its metabolites or markers, in the Athlete's samples", according to the 2015 SAIDS Anti-Doping Rules. Furthermore, pursuant to the 2015 Prohibited List, World Anti-Doping Code, effective from 1 January 2015, **Phentermine** is an *in-competition* Prohibited S6 stimulant and is regarded as a non-specified stimulant.

**2. JURISDICTION :**

2.1 In terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No. 14 of 1997, National Sports Federations must adopt and implement Anti-Doping Policies and Rules which conform with the World

Anti-Doping Code ("the Code") and with the requirements as set out in the SAIDS Anti-Doping Rules.

- 2.2 The Code is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the harmonization of Anti-Doping Policies, Rules and Regulations, across all sports amongst all countries around the world.
- 2.3 The South African Government has made a formal commitment to the Code and formally recognized the role of WADA through the Copenhagen Declaration of Anti-Doping in Sport (2003).
- 2.4 SAIDS is the statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.
- 2.5 SAIDS has formally accepted the WADA Code and has adopted and implemented its Anti-Doping Rules in accordance with its responsibilities under the Code, on 25 November 2005.
- 2.6 The South African Equestrian Federation has adopted the Code, following an International Review of the Code by all signatories, with the new WADA Anti-Doping Code 2015, effective as of 1 January 2015, having been agreed with an effective implementation date of 1 January 2015. These Rules under the Code were adopted and implemented by the South African Equestrian Federation, in conformity SAIDS efforts to eradicate doping in sport, as set out in the 2015 SAIDS Anti-Doping Rules, in conformity with the WADA Code.
- 2.7 The Respondent is an equestrian who falls under and is bound by the 2015 SAIDS Anti-Doping Rules and the WADA Code.
- 2.8 These Anti-Doping Rules so adopted by SAIDS and the South African Equestrian Federation, are sports rules governing the conditions under which sport is played. Athletes, including the Respondent, accept these Rules as a condition of participation and are bound by them.

2.9 The SAIDS Anti-Doping Rules apply to SAIDS, each National Federation of South Africa and each participant in the activities of the National Federations by virtue of their participants' membership, accreditation or participation in their National Federations as well as their own activities and events. The Complainant in this matter has jurisdiction over the South African Equestrian Federation and its members, including the Respondent, who are consequently subject to the SAIDS Anti-Doping Rules and the South African Equestrian Federation Rules.

3. **DISCIPLINARY COMMITTEE :**

3.1 A Disciplinary Committee was convened by the Complainant in order to determine whether, in this case, a Doping Violation in terms of the SAIDS Rules (as embodied in the charge aforementioned), was committed by the Respondent.

3.2 The Committee consisted of :

Monty Hacker, Chairperson and an admitted attorney of some fifty-six years standing;

Dr Dimakatso Ramagole, a medical practitioner and sports physician of many years standing, and;

Professor Yoga Coopoo, a sports administrator of many years standing.

Ms Palesa Motene represented the Complainant as its Prosecutor, presenting the charge against the Respondent at the initial hearing in this matter. However, at the adjourned hearing of the matter, the Complainant was represented by Mr Michael Murphy.

At the original Hearing, the Respondent attended the Hearing personally, and was unrepresented, but at the adjourned Hearing, the Respondent was represented by Advocate Robert Wilson, instructed by Attorney Paul Crosland of the law firm, Webber Wentzel.

- 3.3 The Hearing before the Committee was originally convened to be held at the Holiday Inn Garden Court, Sandton City, corner West and Maude Streets, Sandton, Johannesburg at 17h00 on Tuesday 15 March 2016, where it commenced. When it was adjourned to Thursday, 30 June 2016, it was convened to be held at the Holiday Inn Express, The Zone, Oxford Road, Rosebank, Johannesburg at 17h00, at which time the Hearing was resumed.
- 3.4 At the original Hearing on 15 March 2016 when the Respondent acknowledged the commission by her of the Anti-Doping violation with which she was charged, as established in the Analytical Reports on the testing of the Respondent's samples, as issued by the Laboratory dated 3 November 2015. She also explained to the Committee that the *causa* for her urine samples testing positive to the presence of **Phentermine** was the ingestion by her of **Duromine** in order to address a weight problem which she had had all her life. She also explained that her use of **Duromine** was not to gain an advantage over anyone else or to cheat. She also explained that habitually, she "always stopped taking it (**Duromine**) at least a week before I have had any competition". Her motivation in ingesting **Duromine** was to improve her appearance by losing weight and presenting a better body image, by following a regime of dieting. When cross-examined by Ms Motene, the Respondent explained that she had been told by her doctor when she questioned the lasting effects of the **Duromine** in her system, that **Duromine** would last in her system for approximately 4 (four) days after ingesting it. She explained further that she believed that to double-up on this 4 (four) day potency, she would be safe to discontinue using **Duromine** some 9 (nine) days before competition, but as she had now learned, this was not long enough and she had clearly miscalculated. She went on to add that, having received this advice from her doctor, she followed-up by researching different websites to try to gain a better knowledge of the effects of **Duromine** in the human system. Cross-examined by Dr Ramagole, the Respondent testified that she had been previously tested and that the analysis of her previous samples had not resulted in a Doping Violation. When questioned further by Dr Ramagole about the Respondent's Doping Control Form which reflects the use of **Diotroxin**, the Respondent explained that the **Diotroxin** is taken for

a hypo-thyroid disorder and that in fact, she has had this disorder for 9 (nine) or 10 (ten) years. Dr Ramagole explained to the Committee that the treatment of a hypo-thyroid disorder with **Diotroxin** tends to create a problem with weight control, slowing the patient's metabolic rate and delaying the breaking-down of the **Duromine** within the predicted 4 (four) day period which had been quoted to the Respondent by her doctor.

- 3.5 When the Hearing adjourned for the consideration of the Committee on 15 March 2016, on the recommendation of Dr Ramagole, the Chairman contacted the Respondent and suggested to her that she arrange for him to be contacted by her attorney, in order to establish whether reliable exculpatory evidence could be produced on her behalf. As a consequence of a discussion which the Chairman subsequently had with the Respondent's attorney, Mr Paul Crosland, followed by communications between Mr Crosland and Mr Murphy, it became necessary to reinstate the Hearing in this matter for the benefit of the Respondent, to enable her, with the aid of her legal advisers, to produce exculpatory medical evidence before the Committee. This in turn led to the reinstatement of the Hearing of this matter for its resumption on 30 June 2016.
4. At the adjourned, reinstated Hearing of this matter on 30 June 2016, the Respondent's legal counsel presented the Committee and the Prosecution with a bundle, *inter alia*, containing medical reports from doctors who had examined the Respondent subsequent to the initial Hearing in this matter, namely, Drs Karen Smit, J McLoughlin and Helen Elizabeth Harrison. In addition, the Respondent's legal counsel tabled written Heads of Argument :
  - 4.1 It emerged from the report of Dr Harrison that in the case of the Respondent, the discontinuation of the ingestion of **Duromine (Phentermine)** 9 (nine) days prior to competition, was not a sufficiently reasonable period of time for the drug to be excreted from her system because the **Diotroxin** she was taking, probably contributed to the slowed excretion rate of the **Adipex Phentermine/Thyroxine/Liothyronine** interactions. Dr Harrison further reported that "*interactions have been confirmed that the nature and consequences of these have not been studied in sufficient detail or documented definitively enough for anyone to*

say what the exact consequences of this interaction are on the metabolism of **Phentermine**.”

Dr Harrison went on to add that, “if the interaction causes :

- a reduction in the bioavailability or action of **Levothyroxine** or **Liothyronine**, the thyroid gland would be expected to be underactive, the rate of metabolism by the body subsequently decreased, and the concentration of **Phentermine** in the system increased.
- a reduced rate of excretion or metabolism of **Phentermine**, it would lead to an increased half-life and hence drug clearance time for the **Phentermine**.
- an increased rate of absorption of **Phentermine** would result in an increased blood concentration, hence an increased time to clear the drug from the body.

I, therefore, believe that Ms Foxcroft behaved responsibly in stopping the drug when she did and that unfortunately, the drug interaction between the 2 (two) medications affected her in this instance, leading to a positive test on the day of competition. This is a person who takes her competing seriously, and made a reasoned and informed judgement about when to stop the **Adipex**. I would argue that she could not have been expected to foresee that the medication could remain in her system for a full 3 (three) days more than documented.”

4.2 In his Heads of Argument, Mr Wilson emphasized that the Respondent :

4.2.1 did not intend requesting her “B” samples to be analysed;

4.2.2 wished to exercise her right to present facts and circumstances relevant to the adverse analytical finding, but required further time in which to do so;

- 4.2.3 on 4 February 2016, she had delivered a written statement explaining the circumstances under which the positive finding occurred, and;
- 4.2.4 on 19 February 2016, she was advised of the initial Hearing in this matter.
- 4.3 In dealing with Dr Harrison's report, Mr Wilson reiterated Dr Harrison's findings as set out above, asserting that the Respondent had behaved responsibly in stopping the drug when she did.
- 4.4 Mr Wilson therefore argued that, regard being had to the fact that the Respondent's use of the non-specified **Phentermine** was not intentional and was not to be treated as a reduction of the 4 (four) year period of ineligibility provided for in SAIDS Rule 10.2.1.1, but to a reduced sanction period of 2 (two) years, applying the provisions of Rule 10.2.3 as the **Phentermine** had been ingested by the Respondent out of competition, in a context unrelated to her sports performance, which, he contended, presumes the use thereof not to be "intentional". He went on to argue that the Respondent's medical evidence established not only that the use of the Prohibited Substance was unintentional, and that if the Committee found that it had occurred through no fault or negligence on the part of the Respondent, the Anti-Doping Rule violation with which the Respondent was charged, should result in the Respondent's period of ineligibility being completely eliminated. He further conceded that, if it was the opinion of the Committee, that the Respondent had failed to demonstrate *No Fault or Negligence*, she had in fact established *No Significant Fault or Negligence*, then the period of ineligibility is to be reduced, based on the degree of fault, up to a reduction equivalent to half of the otherwise applicable period of ineligibility (in other words, that the period of ineligibility should be reduced from 2 (two) years to 1 (one) year, relying upon Rule 10.5.2. He further argued that as Article 10.2.1 did not apply in the case of the Respondent (requiring a 4 (four) year sanction), the initial period of ineligibility shall be 2 (two) years, reduced by one-half thereof to 1 (one) year, as provided for in Article 10.5.2, as it was clear that the

Respondent has admitted the Anti-Doping Rule violation, after being confronted with her Anti-Doping Rule violation by SAIDS.

- 4.5 Mr Wilson urged the Committee to invoke the provisions of Article 10.10.2 in the sanctioning of the Respondent by allowing the Respondent to obtain credit for time served during her provisional period of ineligibility which commenced from 26 November 2015, allowing the Respondent to return to train or use the facilities of her club or member organisation during the shorter period of either the last 2 (two) months of her period of ineligibility or the last one-quarter of the period of ineligibility imposed, as is provided for in Article 10.11.2.
5. Mr Murphy, responding to Mr Wilson's arguments, emphasized that whatever the Committee's decision, the Respondent's exculpatory evidence failed to establish that there had been "*No Fault or Negligence*" and that accordingly, Article 10.4 cannot be applied to the Respondent. He furthermore contended that at the very least, the Respondent was negligent in accepting the advice of her doctor, without insisting upon her conducting a proper examination of the Respondent, going fully into her medical history and determining as a result thereof, as she ought to have done, by advising the Respondent that her metabolism could not have been expected to excrete the **Phentermine** within a 4 (four) day or even a 9 (nine) day period.

6. **THE COMMITTEE'S DELIBERATION :**

Having considered all the evidence presented to us, we find that :

- 6.1 We cannot apply the provisions of Article 10.4 in that we are satisfied that there does not exist, in the case of the Respondent, *No Fault or Negligence*.
- 6.2 We do however accept that there does exist in the case of the Respondent, *no significant fault or negligence*, sufficient to disqualify the Respondent from benefitting from the provisions of Article 10.10.2, as read with Article 10.5.1.1.



- 6.3 We find also that the evidence of Dr Harrison concerning the Respondent's underactive thyroid and the consequences thereof, caused the Respondent to miscalculate the time it ought to have taken for the **Phentermine** which she ingested out of competition, to have been excreted from her system prior to the date of the competition.
- 6.4 We also are of the opinion that the Respondent's use of **Phentermine** did not constitute an intentional Anti-Doping violation, that she did so for reasons unrelated to a desire to improve her performance in her chosen sport and that there was no intention on her part to cheat.

7. **CONCLUSION :**

- 7.1 The Committee, after due deliberation, has accepted the evidence of the Respondent and the medical evidence of Dr Harrison presented on her behalf.
- 7.2 We have also accepted the argument presented by Mr Murphy on behalf of SAIDS, that the Respondent cannot rely upon the provisions of Article 10.4, as she has not discharged the onus of establishing that she bears *No Fault or Negligence*.
- 7.3 Accordingly, we find that the Respondent is guilty of contravening SAIDS Anti-Doping Article 2.1, as read with Articles 10.5.1 and 10.5.2.
- 7.4 Accordingly, the sanction which we impose upon the Respondent is a 1 (one) year suspension, with the reduced period of ineligibility being not less than 6 (six) months from the date of the imposition of the provisional sanction in this matter by the Complainant on 26 November 2015, and that the minimum 6 (six) month period shall expire on 25 November 2016. We therefore sanction the Respondent to a 1 (one) year period of ineligibility, commencing on 26 November 2015 and expiring on 25 November 2016, to include the Respondent's provisional suspension which runs from 26 November 2015.

- 7.5 During the last quarter of the 1 (one) year suspension hereby imposed upon the Respondent, she is hereby authorised, with effect from 25 August 2016, to use the facilities of her club or equestrian federation, to return to training.
- 7.6 The Respondent is directed to return whatever awards she received during the competition at which she was tested on 4 October 2015 and the results relating thereto are hereby expunged.
- 7.7 During the 12 (twelve) months of the sanction hereby imposed, namely until 25 November 2016, the Respondent remains precluded from competing and/or participating in any authorised or organised sport at local, provincial, national and international level events.
- 7.8 Both the Complainant and the Respondent shall bear their own costs arising from and during this Hearing.

**DATED at JOHANNESBURG ON THIS THE 13<sup>th</sup> DAY OF JULY 2016.**



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**MONTY HACKER**  
Chairman

**With DR DIMAKATSO RAMAGOLE and  
PROFESSOR YOGA COOPOO concurring.**