

IN THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT

ANTI-DOPING HEARING PANEL

HELD AT HOLIDAY INN ROSEBANK (JOHANNESBURG)

In the matter of: Mr Craig Masson

Date of Hearing: 16 March 2016

RULING

1. INTRODUCTION

1.1 The South African Institute for Drug Free Sports ("SAIDS") brought charges against the Athlete Mr. Craig Masson ("the athlete") for anti-doping violation.

1.2 The hearing was held on 16 March 2016 in Johannesburg.

2. COMPOSITION OF THE PANEL

2.1 The Hearing Panel was appointed by SAIDS 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 Hearing Panel ("**the Panel**") has been Appointed in terms of Article 8.1 of the Rules. The Article states that:

"The Registrar shall appoint an independent Doping Hearing Panel consisting a minimum of, but not being limited to, three (3) members to hear and adjudicate cases. The Hearing Panel should consist of at least the following:

- a) A Legal practitioner who shall act as a chairman;*
- b) A medical practitioner and/or a person with analytical and /or forensic pharmacology or endocrinology; and*
- c) Either a second person from category (a) or (b) or an additional member who shall be, or has previously been, a sports administrator or an athlete".*

2.3 The appointment of the Hearing Panel complied with Article 8.1 in that the Hearing Panel consisted of the following members:

Mr. Mandla Tshabalala (A Legal Practitioner; Chairperson);

Dr. Sello Motaung (A Medical Practitioner) and Mr Leon Fleiser (Sports Administrator).

2.4 The pro-forma prosecutor for SAIDS was Mr. Michael Murphy.

2.5 The Athlete was represented by Mr Bryce Matthewson

3. JURISDICTION

3.1 The Panel had to determine whether it has jurisdiction to adjudicate on this matter, and in doing so we were guided by the SAIDS Anti-Doping Rules 2015.

3.2 in terms of Article 1.3 of the Rules the Panel will have jurisdiction to adjudicate and shall apply to the following:

“1.3.1 These Anti-Doping Rules shall apply to the following persons (including minors), in each case, whether or not such Person is a national of or resident in South Africa:

All Athletes and Athletes Support Personnel who are member or licence holders of any National Federation in South Africa, or of any member or affiliate organisation of any National Federation in South Africa (including any clubs, teams, associations or leagues); all Athlete and Athlete Support Personnel who participate in such capacity in Events, Competitions and other activities organised, convened, authorised or organised by any Federation in South Africa or by any member or Affiliate organisation of any National Federation in South Africa (including any clubs, teams, associations or leagues), wherever held;

any other Athlete or Athlete support Person or other who, by virtue of an accreditation, a licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of any National federation in South Africa (including any clubs, teams, associations or leagues), for purposes of anti-doping;

all Athlete and Athlete Support Personnel who participate in any capacity in any activity organised, held, convened, or authorised by the organiser of a National Event or of a national league that is not affiliated with a National Federation; and

all Athletes who do not fall within one of the foregoing provisions of this Article 1.3.1 but who wish to be eligible to participate in International Events or National Events (and such Athletes must be available for testing under these Anti-Doping Rules for at least six (6) months before they will be eligible for such Events).

1.3.2 These Anti-Doping Rules shall also apply to all other Persons over whom the Code gives SAIDS Jurisdiction, including all Athlete who are nationals of or resident in South Africa, and all Athletes who are present in South Africa, whether to compete or to train or otherwise.

1.3.3 Persons falling within the scope of Article 1.3.1 or 1.3.2 are deemed to have accepted and to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of SAIDS to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules, as a condition of their membership, accreditation and/or participation in their chosen sport".

3.3 The athlete competes in the sports of Powerlifting and therefore SAIDS Rules apply to him.

4. APPLICABLE RULES

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

5. CHARGE

- 5.1 The charge favoured by SAIDS against the athlete is contained in a letter dated 29 February 2016¹, 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 2.3 of the 2015 Anti – Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 09 December 2015, you evaded, refused or failed to submit to sample collection after you were notified of your selection for an out-of-competition doping control test by the South African Institute for Drug Free Sport Doping Officer.”

6. PLEA

- 6.1 The Athlete pleaded not guilty to the charge.

7. EVIDENCE

- 7.1 SAIDS called its first witness Mr Hendrick Grobler who testified that he first tested the Athlete for urine sample on 18 November 2015.
- 7.2 The witness further stated that he was instructed to conduct the second test on the athlete and this time he was accompanied by a colleague who would conduct blood sample collection.
- 7.3 The witness stated that he attended to the Athlete home on 1, 2 and 4 December 2015 to conduct the Sample test collection and that on these occasions the Athlete could not be found.
- 7.4 He then, together with his colleague attended again to the Athlete's family home on 09 December 2015 and found him and the Athlete said to the witness and his colleague that he would consent to the testing collection until such time that the witness and his colleague sign a

¹ Page 50 of the Athlete's Bundle

document which the Athlete prepare, and as a consequence the Athlete refused to submit to testing collection.

- 7.5 Throughout his testimony the witness referred the panel to his report which same is contained in the bundle.²
- 7.6 During cross-examination the witness was asked whether it is usual that multiple tests are conducted on the athlete, the witness stated that it does happen, he further emphasised that they only receive an instruction from SAIDS to attend to testing an Athlete.
- 7.7 The witness was further asked whether he informed the Athlete that he was tested for both urine and blood on 1 December 2015, the witness confirmed that the Athlete was indeed informed of same.
- 7.8 SAIDS called its second witness Mr Zanoxolo Futshane who testified that he is employed by the Department of health as a professional Nurse.
- 7.9 The witness further testified that he was informed to conduct the blood sample collection on the Athlete and that he accompanied Mr Grobler on 01, 02 and 04 December 2015 and that they were not successful.
- 7.10 He further testified that they attended to the Athlete family home again on 09 December 2015 and they found the Athlete who refused to submit to test collection.
- 7.11 During his testimony the witness made reference to his report which is contained in the bundle.³

² Page 7 of the Respondent Bundle.

³ Page 8 of the Respondent Bundle.

- 7.12 During cross-examination the witness was asked whether is usual to conduct multiple tests on the Athlete, the witness stated that it does happen when they are instructed by SAIDS to do so.
- 7.13 The witness was further asked whether the Athlete refused to be tested, the witness said the Athlete said he was not going to be tested until such time they sign a letter prepare by the Athlete.
- 7.14 During the Athlete's case, he conceded that he is bound by the SAIDS rules and that he pleaded not guilty on the ground that he had no intention of refusing to be tested and that he had a compelling justification why he was not tested on the night on 09 December 2015.
- 7.15 He further testified that he was introduced into the sport by a friend and that he participates in sport socially.
- 7.16 He further stated that he has no national colours yet but in 2015 he entered national event where he came second.
- 7.17 The witness stated that he felt that he was victimised in the sport as he was told that certain Mr Rodney Anthony did not like him and this person is the one who put his name to be tested.
- 7.18 He further said that on 09 December 2015 when the SAIDS official found him for testing he sought clarity from the officials and that he prepared a letter in order to protect his family for what he termed harassment.
- 7.19 The Athlete however conceded that what he heard from his friends was hearsay and that he did not refuse to be tested and that if they informed him that it was urine and blood tests and provided further explanation, he would have submitted himself for testing.

8. BURDEN OF PROOF

- 8.1 The SAIDS rules places a burden of proof on the prosecution to prove to the comfortable satisfaction of the hearing panel, that the athlete

violated an anti-doping rule. 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 than 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 rule violation 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”.

9. THE LAW

- 9.1 The charge against the athlete constitutes a breach of Article 2.3 of the 2015 Anti-Doping Rules South African Institute for Drug-Free Sport, with a heading “Evading, Refusing or Failing to submit to Sample Collection.” Article 2.3 specifically states that:

“Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorised in these Anti-Doping Rules or other applicable anti-doping rules”

- 9.2 The above provision is founded on strict liability that is applicable to anti-doping violations, however the burden of prove then shifts to the Athlete to prove that he had compelling justification

9.3 Athletes are required to adhere to a standard set by the anti-doping rules at all times.

10. ANALYSIS OF EVIDENCE

10.1 During the hearing the Athlete kept on referring to the fact that his friends and teammates informed him that Rodney Anthony disliked him and he alleged that Mr Anthony put up his name for out of competition testing.

10.2 The Athlete however conceded that what he heard from his friends and teammates amount to hearsay, something that is inadmissible before the Panel.

10.3 Hearsay can only be admissible if the author or originator testifies before the panel.

10.4 Hearsay is not defined by the SAIDS rules and one had to borrow such definition from Schwikkard, who defined hearsay as "*evidence whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence.*"⁴

10.5 The Athlete failed to bring any witness to confirm the hearsay and therefore the evidence on Rodney Anthony is inadmissible and will not be considered by the Panel.

10.6 The Athlete stated during his testimony that he had no intention of refusing to submit himself for testing, however conceded that he refused to be tested when SAIDS officials refused to sign his letter and that they failed to clarify why he was tested.

10.7 Intention is defined in the SAIDS Anti-Doping Rules as follows:

⁴ Schwikkard Principles of Evidence 4th ed.2015 at 22

*"Intention requires that the Athlete or other person engaged in conduct which he or she knew constitute an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregard that risk."*⁵

- 10.8 During the testimony of Mr Grobler and that of Mr Futshane, they both testified that the Athlete knew or ought to have known the risk the Athlete was putting himself in i.e. being banned in saying that they both stated that as they were leaving the family home of the Athlete he said to them "he knows that he will be banned."
- 10.9 The above is a clear indication that the Athlete knew the risk he was putting himself in of being banned if he refused or failed to submit for test collection.
- 10.10 The Athlete did not lead any evidence that suggests that he did not know the risk of being banned by SAIDS.
- 10.11 The Athlete prepared a letter which he demanded that the SAIDS official sign before submitting himself to the test collection.
- 10.12 This letter was prepared on 04 December 2015, the very same date Mr Grobler and Mr Futshane attended to the Athlete's home and failed to conduct the test on the Athlete.
- 10.13 If the Athlete really sought an explanation, he could have send this letter to SAID and not wait for the SAIDS officials to attend to his house.
- 10.14 The content of the letter indicates that the Athlete had no intention of submitting himself to testing, unless if SAIDS meet certain conditions, which conditions could not have been addressed by the two officials who attempted to test the Athlete.

⁵ Article 10.2.3

- 10.15 In the absence of such conditions, the Athlete refused to submit himself for testing, therefore the Athlete intentionally refused to submit himself test collection.
- 10.16 One other ground the Athlete raised was that there was compelling justification why he refused to submit himself for testing.
- 10.17 The compelling justification which the Athlete relied on was that his family experienced harassment and that as the father he had to be seen to be protecting his children.
- 10.18 Justification is a ground of defence where any affected person can easily escape consequences.
- 10.19 For example, in criminal law, if one is charge with a criminal offence, he can raise a ground of justification (there a number of them) as a defence to escape prison sentence.
- 10.20 SAIDS rules make reference to compelling, meaning the justification must be compelling.
- 10.21 Compelling requires a state of convincing⁶, a justification that is convincing to the panel.
- 10.22 The testimony of the Athlete that compelling justification emanates from him protecting his family, we found it not to be compelling enough for the Athlete to have refused to submit himself for sample testing.
- 10.23 It is common cause in case that the Athlete failed to submit himself for substance test.
- 10.24 It is also common cause that the Athlete refused to submit himself for substance test on 09 December 2015.

⁶ Collins Paperback Dictionary page 123

10.25 The Panel found that the Athlete had the intentionally to refuse to submit himself for test collection.

10.26 The Panel also found that the Athlete had no compelling justification why he did failed or refused to submit himself for test collection.

10.27 Therefore the Panel reached an unanimous decision that the Athlete is guilty as charged

9 SANCTIONS

10.1 For the Panel to impose sanctions against the Athlete, we were guided by the provisions found in Article 10 of the SAIDS Rules.

10.2 The provision which is relevant before the Panel is Article 10.3.1, which state that;

"For violation of Article 2.3 of Article 2.5 the period of ineligibility shall be four (4) years unless, in the case of failing to submit to Sample collection, the athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of ineligibility shall be two (2) years."

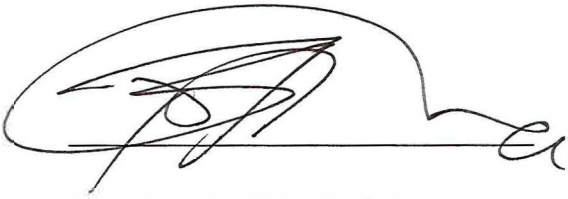
10.3 The Panel found that there was intention on the part of the athlete to refuse to submit to substance collection and that he had no compelling justification of his refusal.

10.4 Therefore the Panel imposed the following sanctions against the Athlete:

10.4.1 A period of ineligibility shall be four (4) years in terms of Article 10.3.1

10.4.2 The Athlete shall serve the period of ineligibility from the date of Notification.

Date: 16 March 2016

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a horizontal line and a small flourish at the end.

Mr. Mandla Tshabalala

**For and on behalf of
Dr. Sello Motaung and Mr Leon Fleiser**