

In the matter between :

South African Institute for Drug-Free Sport (SAIDS)

Complainant

and

Michiel Opperman

Respondent

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## DETERMINATION

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1. **CHARGE :**

The Respondent, Dr Michiel Opperman, a chiropractor, competing as a Combat Sports Fighter at an Extreme Fighting Competition ("EFC"), as a Mixed Martial Arts competitor, on 2 September 2016, who at 21h57, provided a urine sample number 4012964, which, upon analysis by the Anti-Doping Laboratory, Qatar (and the Anti-Doping Laboratory, Rome for IRMS Analysis), on 13 December 2016, found the presence in the Respondent's "A" sample of **19-Norandrosterone (19-NA)**, in a mean concentration of 5.4ng/ml, which exceeds the established threshold of 2.5ng/ml. **19-Norandrosterone** is a Prohibited Substance for which the Respondent did not hold an approved TUE. This constitutes an adverse analytical finding, which is, *prima facie*, a breach of Article 2.1 "the presence of a Prohibited Substance or its metabolites or markers, in the Athlete's sample", according to the 2015 SAIDS Anti-Doping Rules. Furthermore, pursuant to the 2015 Prohibited List, World Anti-Doping Code, effective from 1 January 2015, **19-Norandrosterone** is prohibited, as a non-specified substance, at all times.

## 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 Extreme Fighting Championships covers all Combat Sports, including Martial Arts, which 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 sporting body with which the Respondent is a member, namely Bloodsport Mixed Martial Arts and Productions (Pty) Limited ("Bloodsport"), in conformity with SAIDS efforts to eradicate doping in sport, as set out in the 2015 SAIDS Anti-Doping Rules, which, in turn, is in conformity with the WADA Code.

- 2.7 The Athlete/Respondent is contracted to Bloodsport and in terms of his contract with Bloodsport, he is obliged to comply with all Rules, Competitors' Guide, Health And Safety Guidelines and Codes of Conduct relating to drugs and doping, as set out by all relevant sanctioning bodies and with the World Anti-Doping Authority Code as well as the South African Institute for Drug-Free Sport Act No. 14 of 1997.
- 2.8 These Anti-Doping Rules so adopted by SAIDS and EFC (which includes Bloodsport), are sports rules governing the conditions under which Bloodsport 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 Bloodsport and its members, including the Respondent, who are consequently subject to the SAIDS Anti-Doping Rules and the Bloodsport Rules including the Rules applicable to Mixed Martial Arts.

### 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 Rob Collins, a medical practitioner and sports physician of many years standing, and;

Mr Leon Fleiser, a sports administrator of many years standing.

3.3 The case was prosecuted on behalf of the Complainant by Mr Farai Razano, together with Ms Wafeekah Begg as a SAIDS observer.

3.4 The Respondent, being present, was represented by Attorney Niel du Plessis.

3.5 The Respondent elected not to have his "B" sample tested.

#### 4. INITIAL HEARING :

4.1 The initial Hearing was convened for 29 March 2017 at 17h00, at the Holiday Inn Express, The Zone, Oxford Road, Rosebank, Johannesburg, where all parties were present.

4.2 During the initial Hearing, Mr du Plessis, on behalf of the Respondent, advised the Panel that he wished to take a point *in limine* in order to challenge the procedural analysis of the Respondent's urine sample at the Qatar Laboratory. However, when it emerged that to enable him to properly challenge the Qatar Laboratory's procedures, it became necessary to postpone the Hearing in order for arrangements to be made for the Laboratory official to testify on these procedures and to be cross-examined, Mr du Plessis, on the instructions of the Respondent. However, not wishing to delay the proceedings, Mr du Plessis, on behalf of the Respondent, abandoned his point *in limine* and in order for the Hearing to proceed expeditiously. Mr du Plessis then, on behalf of the Respondent, entered a plea of guilty in terms of Article 2.1 of the Complainant's Anti-Doping Rules 2015, namely for the presence of a Prohibited Substance or its metabolites or markers in the Athlete's "A" sample.

4.3 With the admission of the Anti-Doping offence, it then became necessary for Mr du Plessis, on behalf of the Respondent, to lead evidence on the issue of sanction to be imposed on the Respondent. For this purpose he requested a postponement of the matter, to enable him to prepare argument. Consequently, the Hearing was then adjourned, by agreement, to 16 May 2017, at the same venue, at 17h00. However, this adjournment was, by agreement, eventually



re-scheduled for 18h00 at the same venue, on Monday 22 May 2017, for the leading of evidence by the Respondent, in mitigation of sanction.

5. **RECONVENED HEARING ON 22 MAY 2017 :**

- 5.1 The re-convened Hearing commenced shortly after 18h00 on 22 May 2017, with the same parties present.
- 5.2 At this re-convened Hearing, Mr du Plessis led evidence in the form of Affidavits which had been deposed to by the Respondent, his doctor, namely Dr Petrie Joubert, who is a homeopath, and a fellow chiropractor of the Respondent, namely Sindi Ludik Opperman. The gist of this evidence was that the Respondent, on the advice of Dr Joubert, in order to address the Respondent's tiredness and lack of libido, prescribed injections for the Respondent to receive in the form of a substance named Heel Testis Compositum ("Compositum") as to 1 to 3 (one to three) intramuscular injections weekly. That these injections had a positive effect on the Respondent, as evidenced by the fact that the Respondent's libido improved, with his wife falling pregnant and giving birth to a child subsequent to the Respondent being tested on 2 September 2016.
- 5.3 However, it was contended by Mr du Plessis that the Respondent, having searched the WADA Prohibited List, established that Heel Testis Compositum was not listed as a Prohibited Substance. It was furthermore contended by Mr du Plessis that it was these Compositum injections which the Respondent had received (including him injecting himself), which triggered an elevation in the Respondent's endogenous **19-Norandrosterone** which, in turn, explained the Respondent's Anti-Doping Rule violation for **Nandrolone**.
- 5.4 It was however not established from Mr du Plessis' argument or any of the evidence presented, that these Compositum injections did or did not themselves contain metabolites of **Nandrolone** or that they indeed triggered an elevation in the Respondent's endogenous **Nandrolone** concentration. It was also not established that the substance injected may have been a Contaminated Product, as defined in the SAIDS Anti-Doping

Rules. Furthermore, the fact that this substance Compositum might have contained (undisclosed on its label or in available information), a Prohibited Substance, sufficient for it to be treated as a Contaminated Product, was not argued by Mr du Plessis. However, the Respondent had not extended his search for information on Compositum beyond having established that it did not feature on the WADA List as a Prohibited Substance.

5.5 What Mr du Plessis did argue was that the Respondent's sample elevation beyond the threshold of 2.5ng/ml should be disregarded for the purpose of establishing that an Anti-Doping Rule violation had occurred because males and females, he contended, ought to have the same threshold for **Nandrolone**, with the male threshold being the same as the female threshold.

5.6 Following Mr du Plessis' address which he wished to have regarded as the Respondent's evidence in mitigation of sanction, the Respondent was tendered for cross-examination. The cross-examination which followed was by :

5.6.1 Mr Razano, on behalf of SAIDS, established from the Respondent's answers, that the Respondent had only begun researching Compositum beyond the fact that it did not feature on the WADA Prohibited List, subsequent to him having tested positive for the presence of **19-Norandrosterone**. The Respondent had not questioned the possibility that it might have contained a Prohibited Substance. Furthermore, the Respondent, when referred to his Anti-Doping Control Form, in particular paragraph 39 thereof dealing with the list of medication and nutritional supplements taken by him during the seven days preceding his testing, was unable to explain what the shake was on his list, nor the fact that absent from the list was the disclosure of Compositum with which he had been injected during this seven day period, as recently as the day before his competition at which he was tested. The Respondent was also vague, answering Mr Razano, as to the number of ampules in the box which he had

purchased containing them. In addition, he, in answer to Mr Razano's question about surrendering one of these capsules to SAIDS for testing, said that he had not thought about surrendering one of these ampules to SAIDS for testing, but in any event he contended that he believed that it was very difficult to get any kind of support in this regard from SAIDS. However, the Respondent stated that he no longer had any of these ampules in his possession, to submit them for testing.

5.6.2 Dr Collins, whom he informed that he had inspected the WADA site as well as the body building website, but not the Mims site, particularly that portion of the Mims website which is highlighted in red.

5.6.3 The Chairman, whom he informed that he had not, prior to being tested, searched the internet to obtain information about Compositum, nor had he Googled Compositum to obtain information about this substance. He did, however, inform the Chairman that he was aware that paragraph 4.4.1 of Dr Joubert's Affidavit in which the latter warned users of the product of hypersensitivity to donor animal protein. This aside, he acknowledged that he no longer had in his possession any of the ampules containing the Compositum.

## 6. ARGUMENT BY THE PARTIES :

6.1 It was argued by Mr du Plessis that the Respondent had not intentionally caused his Anti-Doping Rule violation, that he had searched the WADA website to establish that Compositum was not included in the WADA Prohibited List and that he had therefore taken the necessary steps to establish that he was either entitled to the elimination of the period of ineligibility in terms of Article 10.4, because there existed no fault or negligence on the part of the Respondent, alternatively, that the Respondent, in terms of Article 10.6, was entitled to a reduction of the period of sanction, by virtue of the provisions of Article 10.5.2, contending

that there was no Significant Fault or Negligence on the part of the Respondent.

- 6.2 Mr Razano argued that Article 10.2.3 applied and that the Respondent's conduct was intentional, as is provided for in Article 10.2.3 inasmuch as the Respondent in being knowingly injected with Compositum, was engaged in conduct which he knew constituted an Anti-Doping Rule violation, or alternatively knew about the existence of a significant risk that this conduct might constitute or result in an Anti-Doping Rule violation and manifestly disregarded that risk. In support of this argument, Mr Razano relied upon the recent reported SAIDS case of Azwindini Gladys Lukwareni, as well as the CAS case of Cole Henning. He therefore argued that as the Respondent had failed to discharge the onus on him that he had not been able to establish that his Anti-Doping Rule violation was not intentional, the appropriate sanction to be imposed upon the Respondent was a 4 (four) year period of ineligibility, as provided for in Article 10.2.1.1 of the SAIDS Anti-Doping Rules.

## 7. THE TRIBUNAL'S DELIBERATION :

Having considered all the evidence and argument presented to the Tribunal, we find that :

- 7.1 The Respondent's Anti-Doping Rule violation does not involve a Specified Substance.
- 7.2 Page 9 of the package tabled before the Tribunal contains the Qatar Laboratory Anti-Doping Analysis Test Report in respect of the Respondent's sample for S1.1B Endogenous AAS/19-norandrosterone however page 10 of that package reflects an ADAMS finding of S1.1B Endogenous AAS/The GC/C/IRMS result for 19-norandrosterone as consistent with an exogenous origin. Accordingly, there can be no merit in the Respondent's argument that the Compositum triggered an endogenous elevation in his bodily **Nandrolone**, resulting in him testing positive to the Anti-Doping offence with which he was charged and to which he has pleaded guilty.

7.3 The Respondent bears the onus to establish that his Anti-Doping Rule violation was not intentional, as provided for in Article 10.2.1.1. To the contrary, the Respondent had failed to take all necessary steps in order to establish that this Anti-Doping Rule violation was not intentional. He had not searched beyond the WADA Anti-Doping List and acknowledged that he had failed to search the internet or to Google to learn of the reliability of using Compositum.

7.4 Searching Compositum on Google reveals the following quotations :

“Some marketers advertise it as a testosterone booster. Athletes use Testis Compositum since it may increase their testosterone levels.”

“Testis Compositum doesn’t appear on the list of banned substances of most major sports organisations right now, including the World Anti-Doping Agency, according to the associated press.”

7.5 Nowhere in the Googled article/s is it contended that Compositum is either linked to the elevation of endogenous **Nandrolone** or that it contains **Nandrolone** metabolites.

7.6 The Respondent has therefore failed to establish that the Compositum injections he received were in any way whatsoever linked to him testing positive for **Nandrolone**. He also failed to demonstrate that he had exhausted all available investigations capable of establishing the likelihood that Compositum injections were the cause of his endogenous Anti-Doping Rule violation for **Nandrolone**.

## 8. CONCLUSION :

8.1 The Respondent engaged in conduct which he knew either constituted an Anti-Doping Rule violation or alternatively, that he knew there existed a significant risk that his conduct might constitute or result in an Anti-Doping Rule violation and manifestly disregarded that risk.

- 8.2 The Tribunal finds the Respondent guilty in terms of the provisions of Article 10.2.1.1 of the SAIDS Anti-Doping Rules and sanctions him to a 4 (four) year period of ineligibility.
- 8.3 This 4 (four) year sanction shall however commence with retrospective effect from 2 September 2016 being the date of the Respondent's sample collection.
- 8.4 During this period of ineligibility, as provided for in the SAIDS letter to the Respondent of 19 December 2016, the provisions of paragraph 8 thereof apply hereto in that the Respondent is suspended from competing and/or participating in any authorised or organised sport by any amateur or professional league or any national or international level event as from the date of that letter.
- 8.5 Any awards which the Respondent might have received after providing his sample on 2 September 2016, until he was provisionally suspended on 19 December 2016, are hereby forfeited and must be returned.
- 8.6 Both the Complainant and the Respondent shall bear their own costs arising from and during this hearing.

**DATED at JOHANNESBURG ON THIS THE 9th DAY OF JUNE 2017.**



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**MONTY HACKER**  
Chairman

**With DR ROB COLLINS and LEON FLEISER**  
concurring.