

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

**ANTI-DOPING HEARING PANEL**

HELD AT HOLIDAY INN ROSEBANK (JOHANNESBURG)

In the matter of: Mr Marthinus Redelinguys

Date of Hearing: 11 May 2017

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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 Mr. Redelinguys ("the athlete") for Adverse Analytical Findings.
- 1.2 The hearing was held on 11 May 2017 and at Johannesburg and the athlete was represented by Adv Jan van Zyl and Mr Jason Dematroudes of S Roux Inc.

**2. COMPOSITION OF THE PANEL**

- 2.1 The Hearing Panel was appointed by SAIDS a statutory body created in terms of 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 (Sports Physician) and Mr Leon Fleiser (Sports Administrator).

2.4 The pro-forma prosecutor for SAIDS was Ms Wafeeka Begg.

### **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 is an amateur cyclist and therefore SAIDS Rules are applicable 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 of 24 April 2017, 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 2015 Anti – Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 29 August 2015, you provided a urine sample (3928451) during an in-competition test. Upon analysis, the*

*Deutsche Sporthochschule institute for Biochemie in Cologne, a WADA accredited Laboratory reported the presence of a prohibited substance in your urine sample. The substance identified in your sample Prednisolone and Prednisolone. Prednisolone and Prednisolone are categorised under class s9-Glucocorticoids on the World Anti-Doping Code 2015 Prohibited List International Standard."*

## **6. PLEA**

6.1 The Athlete pleaded guilty to the charge.

## **7. PLEA EXPLANATION**

7.1 The Athlete testified that he went to a doctor in Potchestroom who prescribed antibiotics for him.

7.2 He said he felt sick again and attempted to see his Sports Physician and he was not around and he resorted to see another Doctor in Pretoria.

7.3 However he testified that prior to attending to the Doctor, he went on internet and conducted a research on WADA website.

7.4 He said he downloaded a list of prohibited substance and gave the list to the Dr who in return confirmed that the substance he prescribed was a banned substance.

7.5 The doctor informed him that the substance was not to be ingested on day of the event.

7.6 He confirmed that between the doctor and himself they could have misunderstood the word "during even" to mean not to be ingested on the day of the event.

7.7 He further testified that he took the substance two days prior to the even so that he be healed for the event.

7.8 The athlete said he read the document with his doctor and that they saw a paragraph dealing with TUE and they never read it or familiarised themselves with it.

7.9 He further testified that he is Pharmacist by profession and that he has been cycling for the past five years and he regards himself as an amateur.

## **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 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”.*

8.2 Article 3.2 outlines the methods of establishing facts and presumption, and Article 3.2.2 specifically states that:

*“WADA accredited laboratories and other laboratories approved by WADA, are presumed to have concluded sample analysis and*



*custodial procedure in accordance with the International Standard for Laboratories. The Athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, the SAIDS shall have the burden to establish that such departure did not cause the Adverse Analytical Finding".*

8.3 The Sample A of the Athlete was tested by the Deutsche Sporthochschule institute for Biochemie in Cologne a WADA accredited Laboratory.

## **9. THE LAW**

9.1 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"*

9.2 Now the question is how does SAIDS prove the presence of the banned substance in the body of the Athlete, and the answer to the question is found in Article 2.1.2 which states that:

*"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a prohibited substance or its metabolite 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 is analysed and the analysis of 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 split into two (2) bottles and analysis of the second bottle conforms the presence of the prohibited substance or its Metabolites or Markers found in the first bottle".*

9.3 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."*

9.4 The above provision is founded on strict liability that is applicable to anti-doping violations.

9.5 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 do not in any way accept ignorance of the anti-doping provisions or prohibited list.

9.6 The laboratory analysis report on the Athlete's urine sample A, shows presence of a prohibited substance. Sufficient proof of an anti-doping rule violation has therefore been established in accordance with Article 2.1.2.



## **10. ELIMINATION OR REDUCTION OFF PERIOD OF INLEGIBILITY**

10.1 To be able to address the Panel and to be successful in reducing or eliminating the period of ineligibility, the Athlete needed to address the Panel on Article 10 of the SAIDS anti-doping rules which deals with sanctions.

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

10.3 Article 10.4 Specifically states that:

*“If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of ineligibility shall be eliminated”.*

10.4 The above provision places the onus on the Athlete to establish that he bears No fault and Negligence.

10.5 The other provision which an Athlete may argue and to reduce the period of ineligibility based on No Significant Fault or Negligence is Article 10.5.1 which states that:

*“Reduction of Sanctions for specified substances or contaminated products for violation of Article 2.1, 2.2 and 2.6”.*

10.6 For the Athlete to be able to reduce the period of ineligibility, he must be able to establish no Significant Fault or Negligence and identify the source of the substance (in this case, an allegedly contaminated supplement).

10.7 If the Athlete is successful in establishing that the substance came from a contaminated product, the period of ineligibility shall be at a minimum

reprimand or no period of ineligibility, and a maximum, two (2) years of ineligibility, depending on the Athlete's or other person's degree of fault.<sup>1</sup>

10.8 However, the Prosecution conceded that they could not prove that the athlete took the substance intentionally to enhance his performance, therefore according to the prosecution the period of 4 years would not apply.

10.9 Therefore the prosecution presented to the panel that the exceptions in article 10.2.1.1 and 10.2.1.2 are applicable and that the period of ineligibility should be two years.

## **11. REDUCTION OF PERIOD OF INELIGIBILITY BASED ON NO SIGNIFICANT FAULT OR NEGLIGENT.**

11.1 The athlete argued that he bears no fault or negligence.

11.2 The athlete also argued that which the provisions of the SAIDS anti-doping rules are contained in Article 10.5 should be considered and applicable.

11.3 Article 10.5.1 specifically states that:

*“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 (2) years of ineligibility, depend on the athlete's or other person's degree of fault.”*

11.4 It is well established that under this provision, the athlete must establish that his fault or negligence, viewed in all circumstances and having

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<sup>1</sup> Article 10.5.1.1 and 10.5.1.2 respectively.

regard to the criterion for "No Fault or Negligence", is not significant having regard to the doping offence.

11.5 The criterion of No fault or negligence is defined under the WADC as requiring that an athlete did not know or suspect, or could not reasonably have known or suspected even with the exercise of utmost caution, that he or she used the prohibited substance.<sup>2</sup>

11.6 It was found in the case of *Dominique v JADCO* that:

*"the athlete fault is measured against the fundamental duty that he or she had under the programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance."*<sup>3</sup>

11.7 In the recent case of *Maria Sharapova v International Tennis Federation*<sup>4</sup> the tribunal unpacked the word "fault" and "Significant Fault and Negligence" in details.

11.8 The tribunal found fault to mean the following:

*"Fault is a breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of fault includes, for example, the Player or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been perceived level of risk. In assessing the Player or other Person's degree of fault, the circumstances considered must be specific and*

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<sup>2</sup> CAS 2013\_A\_3361 *Dominique Blake v JADCO* at par 925.

<sup>3</sup> See the above no 2 at 926.

<sup>4</sup> Arbitration CAS 2016/A/4643.

*relevant to explain the Player or other Person's departure from the expected standard of behaviour ....."*<sup>5</sup>

## **12. RULING**

- 12.1 The Athlete conducted research on the WADA website and downloaded the WADA prohibited list.
- 12.2 It was the opinion of the panel that this was the most applaudable action by the athlete to avoid ingesting prohibited substance.
- 12.3 He further took the list and gave it to the doctor so that the doctor could prescribe something which does not appear on the prohibited list.
- 12.4 On the advice of the doctor, he was prescribed with banned substances after failing to make understanding of the word "during event".
- 12.5 It was the opinion of the panel that the athlete took outmost caution that he does not ingest a banned substance.
- 12.6 However the athlete and the doctor omitted, neglected or failed to read the paragraph that dealt with TUE in detail and if they did the athlete would probably have been able to apply for TUE well in advance.
- 12.7 The athlete was able to identify the prohibited substance that he ingested.
- 12.8 The prohibited substance was a specified substance.
- 12.9 The question the panel had to answer was the degree of fault or negligence on the part of the athlete.

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<sup>5</sup> See the above 4 at par 74.

12.10 The panels took all the circumstances, and amongst other that the athlete is only five years into the sport and that he an amateur, the fact that the athlete took reasonable steps to ensure that he does not ingest banned substance and that he went to the doctor with the WADA list that contains the prohibited substance.

12.11 The panel was comfortably satisfied with the athlete's argument for the reduction of period of ineligibility and that the degree of fault or negligence was insignificant, and can only be attributed from the failure of the athlete and the doctor to deal with TUE in advance.

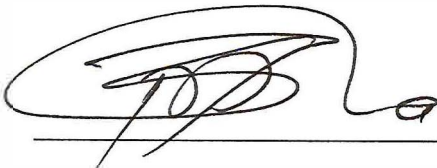
### **13. SANCTIONS**

13.1 The Panel imposed the following sanctions against the Athlete:

13.1.1 A period of ineligibility shall be twelve (12) months in terms of Article 10.5.1.

13.1.2 The Athlete shall serve the period of ineligibility from the date of notification.

Date: 19 May 2017



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Mr. Mandla Tshabalala

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