

# **SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)**

## **ANTI-DOPING DISCIPLINARY HEARING**

### **DECISION**

<b>ATHLETE:</b>	<b>MR TIAAN SMIT</b>
<b>DATE:</b>	<b>05 JULY 2017</b>
<b>SPORTS FEDERATION:</b>	<b>ATHLETICS SOUTH AFRICA</b>
<b>PLACE OF HEARING:</b>	<b>SOUTH AFRICAN DRUG-FREE SPORT OFFICE, SPORT SCIENCE INSTITUTE OF SOUTH AFRICA BUILDING, NEWLANDS, CAPE TOWN</b>
<b>DISCIPLINARY PANEL ("PANEL"):</b>	<b>MR MARIUS HURTER (CHAIRPERSON)</b> <b>DR JASON SUTER (MEDICAL REPRESENTATIVE)</b> <b>MR HASNODIEN ISMAIL (SPORT ADMINISTRATOR)</b>
<b>PROSECUTOR:</b>	<b>MS WAFEEKAH BEGG</b>
<b>ANTI-DOPING RULE VIOLATION:</b>	<b>ARTICLE 2.1 OF THE 2016 SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT ANTI-DOPING RULES</b>

## **A INTRODUCTION AND BACKGROUND**

1. The South African Institute for Drug-Free Sport (SAIDS) formally charged the Athlete Mr Tiaan Smit on 15 June 2017.
2. The charge was brought after a urine sample, taken on 22 April 2017 during an in-competition test, contained an adverse analytical finding after being tested at the Doping Control Laboratory Gent, Belgium
3. The sample (4011994) contained the presence of the prohibited substance Clenbuterol, which is categorised under Class S.1, Anabolic Agents on the World Anti-Doping Code 2017 Prohibited List International Standard.
4. The Athlete waived his right to have his B-sample analysed.
5. The Athlete was *Provisionally Suspended* from competing and participating in any authorized or organised sport by an amateur or professional league or any national or international level event from 25 May 2017, the date the Athlete was notified.

## **B APPLICABLE LAW**

1. At the time of his participation the Athlete was a member through his club and Athletics Gauteng North and as such he and his club fell under the jurisdiction of the Athletics South Africa.
2. The Athlete therefore was subject to the rules governing him as an athlete registered at his club and or province under the jurisdiction of the Athletics South Africa, which association falls under the jurisdiction of
  - a. the International Association of Athletic Federations (IAAF) which has adopted the World Anti-Doping Code 2015;
  - b. the South African Sports Confederation and Olympic Committee 'SASCOC', a signatory to the World Anti-Doping Code as amended – as a member.
3. Although it is common cause and accepted without any qualification whatsoever, that the Rules apply to this matter, as accepted by the Athlete himself, it is relevant to note that the Panel's jurisdiction to hear this matter arises through SAIDS as follow-
  - a. SAIDS is a corporate body established under Section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, 'the Act'.

- b. The main objective which SAIDS has is to promote and support the elimination of doping practices in sport which are contrary to the principles of fair play and medical ethics in the interests of the health and wellbeing of sportspersons.
- c. SAIDS formally accepted the World Anti-Doping Code 'the Code' on 25 November 2005, which the World Anti-Doping Agency 'WADA', had adopted on 5 March 2003.
- d. SAIDS, as the National Anti-Doping Organisation for South Africa, introduced anti-doping rules and principles governing participation in sport under the jurisdiction of SASCO.
- e. The Anti-Doping Rules 2016 'the Rules', as published by SAIDS, which are applicable to the present proceedings, incorporate the mandatory provisions of the Code as well as the remaining provisions adapted by SAIDS in conference with the Code.
- f. Article 8.1.1 of the Rules provide for the Registrar to appoint an independent doping hearing panel 'the Panel' to hear and adjudicate cases.

#### **C PROCEDURAL MATTERS**

- 1. The anti-doping panel consisted of Mr Marius Hurter (Chair), Dr Jason Suter and Mr Hasnodien Ismail.
- 2. Ms Wafeekah Begg was the prosecutor on behalf of SAIDS.
- 3. The Athlete did not make use of representation, corresponded personally and attended the hearing unaccompanied.
- 4. The proceedings were recorded.

#### **D MATTERS FOR ADJUDICATION**

- 1. The panel had to determine whether the Athlete
  - a) was guilty of the anti-doping rule violation for which he had been charged;
  - b) if found guilty, was the Athlete entitled to any reduction of any period of ineligibility in accordance with the Rules.
  - c) In answering the above, the panel was required to meet two fundamental key points –
    - How did the banned substance enter the Athlete's body- what was the explanation?
    - If above was established, the following steps/questions then could lead the panel in determining if a reduction or elimination of any period of ineligibility was possible-

- d) Was the use intentional or not?
2. If the Athlete was negligent, was the fault or negligence significant in his specific circumstances?
  3. Appropriate sanction

## **E SUMMARY OF THE EVIDENCE AND ARGUMENT**

1. The Athlete received written correspondence addressed to the Athlete on 25 May 2017 informing him of an Adverse Analytical Finding, informing him of his rights and the process including his right to have a B sample analysed. The Certificate of Analysis was issued on 19 May 2017, confirming the presence of Clenbuterol in sample number 4011994.
2. The charge against the Athlete was set out in written correspondence addressed to the Athlete on 15 June 2017. The charge against the Athlete read as follows:

*You are formally charged with an anti-doping rule violation in terms of Article 2.1 of the 2016 South African Institute for Drug-Free Sport (SAIDS) Anti-Doping Rules.*

*On the 22 April 2017, you provided a urine sample (4011994) during an in-competition test. Upon analysis, the Doping Control Laboratory Gent reported the presence of prohibited substances in your urine sample. The substance identified in your sample was Clenbuterol. The substance is categorised under Class S.1, Anabolic Agents on the World Anti-Doping Code 2017 Prohibited List International Standard.*

3. The Athlete advised that he understood the charge.
4. The Athlete admitted that he was Guilty of the charge as set out, and acknowledged that he understood the implications of such an admission
5. The Athlete waived his right to have his B-sample analysed.
6. The Athlete is a 110m hurdler and have been competing as a hurdler for some time. He attended Paul Roos High School, Stellenbosch.
7. He keeps record of his weight and time but did not bring those with him to the hearing.
8. On why he used Clenbuterol, the Athlete said wanted to lose 2 to 3 kilograms at the time and asked a friend (who is also an athlete - javelin thrower) what he can use. The friend suggested Clenbuterol, for which he paid around 500 Rand and had to go and collect it from another person (not his friend).

9. The Athlete admitted it was very negligent of him not to ask his doctor or coach or to do some research on products. He stopped using the substance as the side effects got the better of him; sleeplessness, shakings, irritableness, sweating etc.
10. He admitted competing in two other events while on Clenbuterol and that it did not make any difference on the times he was running.
11. In closing, the Athlete was sincerely remorseful and acknowledged his guilt taking full responsibility for his negligence. He understands that he is ultimately responsible for what he takes. He also admitted going to his doctor for anti-depressant medication to help with the trauma he is currently experiencing of being tested positive and not being able to compete anymore.

#### **F FINDING OF THE CHARGE**

The presence of the substances identified as *Clenbuterol* is undisputed. The Panel accepts the Player's plea as Guilty of the offence as set out and as such a violation of Article 2.1 of the 2016 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

#### **G DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION**

Article 2.1.1 of the Rules reads as follows:

*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 Player's part be demonstrated in order to establish an anti-doping violation under Article 2.1.*

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all Players are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the Athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

The Athlete has been found guilty of a doping offence in respect of the substance identified as *Clenbuterol*. *Clenbuterol is categorised under Class S.1, Anabolic Agents* on the World Anti-Doping Code 2017 Prohibited List International Standard.

As such, it is for the Panel to determine whether there are grounds for a reduction in the period of ineligibility in terms of Article 10.2 of the Rules.

Article 10.2.1- The period of Ineligibility shall be four (4) years where:

Article 10.2.1.1- The anti-doping rule violation does not involve a Specified Substance, ***unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.***

***Considering the evidence presented by the Athlete and arguments raised by SAIDS, there are a number of important issues considered in making this finding:***

1. Supplements are known to the Athlete and he took supplements previously;
2. He has been tested twice on previous occasions and this in itself should bring about some awareness regarding doping/banned substance etc;
3. Although he said that he did not receive any formal education about doping, he knew about the use of supplements and heard about it;
4. He had a contract with Athletics Gauteng North and the High Performance Centre based at the University of Pretoria.
5. He had a professional coach in Hennie Kriel and a personal doctor that knows about sport in Henry Kelbrick and that he did not consult any of the these 2 persons close to him as to what he should or can use that's legal to help him lose more weight. Instead he asked his friend the javelin thrower for some advice on how to shed some weight.
6. This was his first offence;
7. He competed in 2 other events while using Clenbuterol, but stopped around 10 days before the Potchefstroom event due to severe side effects of the substance.
8. On the Doping Control Form, he stated what he has been using regularly and did not mention Clenbuterol, as the form stipulates/asks what was used in the last 7 days. As the Athlete stopped using Clenbuterol roughly 10 days before the event in Potchefstroom, he did not declare it.

9. He agreed to be much more careful in using supplements going forward as he now realises how critical it is to establish what one is using;
10. He was open and forthcoming as to how he heard of and bought Clenbuterol;
11. He was remorseful and admitted being very negligent in taking Clenbuterol;
12. The Athlete is not a minor.
13. He is an experienced athlete and the fact that he did not make a substantial effort to find out what he was using, taking into account all the resources to his disposal, is in itself a big departure from the expected standard of behaviour of such an athlete – meaning an athlete of this profile who competes at national level, who are aware of anti-doping rules, who was tested twice before but yet did not take any measures to make sure that what he was about to use is not on the banned list.
14. Relevant case law submitted.

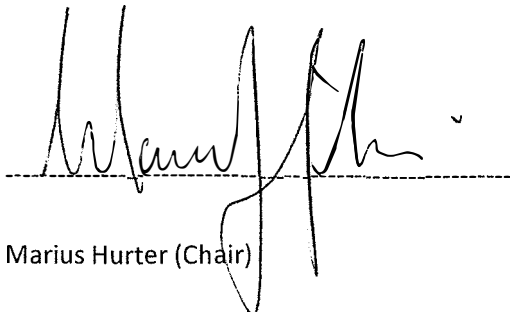
## **H FINAL DECISION & SANCTION**

Based on the Panel's findings and the reasons set out above, the Panel unanimously made the following decision -

1. Mr Tiaan Smit
  - 1.1 having been found guilty of having committed the anti-doping rule violation for which he had been charged under Article 2.1 of the Rules;
  - 1.2 having not shown to the comfortable satisfaction of the panel that the use of the substance was not intentional;
  - 1.3 **a four (4) year period of ineligibility is the appropriate sanction.**
2. Although Article 10.10 provides that such period of ineligibility "shall start on the date of the final hearing decision" it allows for an exception under Article 10.10.3.
  - 2.1 Such exception enables a panel to grant credit for any period of ineligibility served under provisional suspension, which has been respected, against any period ultimately imposed.
  - 2.2 Thus, although the period could have started on 5 July 2017, the Panel decided because the period of provisional suspension had been respected by Mr Smit, it should-

- 2.3.1 be deemed to have commenced on 25 May 2017, the date of the provisional suspension being agreed upon;
- 2.3.2 to end at midnight 24 May 2021, on the understanding that the time Mr Smit served under the provisional suspension from 25 May 2017 be credited to such four (4) year period of ineligibility.

This done and signed at Stellenbosch, 14 July 2017.

A handwritten signature in black ink, appearing to read 'Marius Hurter', is written over a horizontal dashed line. The signature is fluid and cursive, with a small mark to the right of the main text.

Marius Hurter (Chair)

For and on behalf of the Tribunal Panel