

In the matter between:

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (SAIDS)

and

BERNADETTE COSTON

SAIDS/2017/51

In re: ALLEGED VIOLATION OF ANTI-DOPING RULE IN TERMS OF ARTICLE 2.1 OF THE 2016

ANTI-DOPING RULES OF SAIDS

ANTI-DOPING TRIBUNAL FINDINGS AND SANCTION

A INTRODUCTION

1. The South African Institute for Drug Free Sport (SAIDS) has responsibility and authority in respect of anti-doping measures in South Africa. Ms Bernadette Coston is a filed hockey player and participates under the jurisdiction of the South African Hockey Association. She was tested in-competition and provided her urine sample after taking part in a hockey match during the Professional Hockey League (PHL) tournament in Johannesburg. These proceedings are therefore governed by the South African Institute for Drug Free Sport Anti-Doping Rules 2016. Federations and athletes are subject to the jurisdiction of SAIDS in terms of Article 1 of the Anti-Doping Rules 2016 and must comply with the Anti-Doping Rules in terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No 14 of 1997.
2. An Independent Doping Hearing Panel was convened by SAIDS in terms of Article 8.1 of the Anti-Doping Rules 2016 in order to determine whether, in this case, a doping violation in terms of the SAIDS Rules and as embodied in the charge set out below, was committed by Ms Coston.
3. Ms Coston was advised that a doping hearing would be convened for **Monday, 19 February 2018** to hear the charges against her. She was also advised that she was entitled to be legally represented.
4. **The Doping Hearing Panel comprised of:**
Prof Rian Cloete, Chairperson
Mr Jeremy Fredericks, Sports Administrator Representative
Dr Sello Motaung, Medical Doctor

B THE HEARING

5. The hearing was duly convened on **Monday, 19 February 2018** at 17h00 at the Holiday Inn Express, the Zone, Oxford Road, Rosebank, Johannesburg, and the hearing was as far as possible conducted in an informal manner.
6. SAIDS was represented at the hearing by Ms Wafeekah Begg (Prosecutor), who was charged with the duty of prosecuting Ms Coston.
7. Ms Coston had no legal representation, but was assisted by Mr Sheldon Rostron (South African Women's Head Coach) at the hearing.
8. There were no witnesses called at the hearing for either SAIDS or Ms Coston. The hearing proceeded in the presence of the members of the Tribunal, the Prosecutor, Ms Coston and Mr Sheldon Rostron.
9. Evidence tabled before the Tribunal consisted of:
 - 9.1 The notification of the adverse analytical finding (sample number 4010994) dated 6 February 2018;
 - 9.2 Adverse Analytical Finding;
 - 9.3 The Doping Control Form dated 9 December 2017;
 - 9.4 Analytical Test Report Urine: A sample Analysis;
 - 9.5 The Chain of Custody Form;
 - 9.6 The exchange of correspondence between Ms Coston and SAIDS;
 - 9.7 Statement and explanation of Ms Coston dated 8 February 2018;
 - 9.10 Documents and screenshots provided by Ms Coston after the hearing.

C THE CHARGE

10. On 9 February 2018, Ms Bernadette Coston ("Coston"), a field hockey player who participated in the Professional Hockey League (PHL) tournament in Johannesburg under the jurisdiction of the South African Hockey Association on 9 December 2017, was served a written charge as follows:

"On the 9th December 2017, you provided a urine sample (4010994) during an in-competition test. Upon analysis, the Anti-Doping Laboratory in Gent reported the presence of prohibited substances in your urine sample. The substance identified in your sample were 4-methylhexan-2-amine (Methylhexanamine). 4-methylhexan-2-

*amine (Methylhexanamine) is categorised under **Class S.6 Stimulants** on the World Anti-Doping Code 2017 Prohibited List International Standard.”*

11. Ms Coston was notified of the adverse analytical finding on 6 February 2018. She was further informed that she was entitled to have her “B” sample analysed and she should indicate this timeously.
12. The adverse analytical finding of the “A” sample was never disputed by Ms Coston before the hearing and an analysis of the “B” sample was not requested.
13. The following submissions were made by Ms Coston in her statement dated 8 February 2018:
 - 13.1 Ms Coston used Evolve Prolong BCAA as a recovery drink during December 2017.
 - 13.2 She conducted her research using websites such as USADA, SAIDS, Wikipedia and Google. The search was negative.
 - 13.3 Ms Coston bought the Evolve Prolong BCAA supplement off the shelf from the factory in the South of Johannesburg.
 - 13.4 The use of the Evolve Prolong BCAA supplement was disclosed on the Doping Control Form.
14. In order to establish the anti-doping rule violation, it is necessary to set out herein Article 2.1 which read as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.

2.1.1 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 Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1”

2.1.2 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 metabolites 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 makers found in the Athlete’s A-sample*

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the prohibited list, the presence of any quantity of a prohibited substance

or its metabolites or markers in an athlete's sample shall constitute an anti-doping rule violation

2.1.4 ...

15. In order to secure a guilty verdict from the Doping Hearing Panel, the Prosecution needs to discharge the burden of proof as contemplated in Article 3 of the Rules. It states the following:

“3.1 Burdens and Standards of Proof

SAIDS shall have the burden of establishing that an anti-doping rule 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. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the 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 a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 ...

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures 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, then SAIDS shall have the burden to establish that such departure did not cause the adverse analytical finding.

16. A Doping Control Form (69280) was handed into evidence with test mission code 448/17 by SAIDS for the in-competition testing of Ms Coston. This form was signed by the athlete on the 9th of December 2017 acknowledging that she had read the notice, been notified of her selection and gave her consent to provide samples for anti-doping research that was presented into evidence.
17. Ms Coston declared on the Doping Control Form that she consumed the following medication and supplements: Mybulen, Cataflam, Berocca Boost, Prolong BCAA (Evolve) and Magnesium Zinc.
18. The Anti-Doping Laboratory in Gent reported on 6 February 2018 the presence of a prohibited substance in the urine sample (4010994) of Ms Coston. The substance identified in her sample was *4-methylhexan-2-amine (Methylhexanemaine)*. *4-methylhexan-2-amine (Methylhexanemaine)* is categorised under **Class S.6 Stimulants**

on the World Anti-Doping Code 2017 Prohibited List International Standard. The “A” sample test results is therefore *prima facie* a contravention of Article 2.1 of the Anti-Doping Rules.

19. In terms of Article 3.2.2 it is presumed that WADA accredited laboratories conducted sample analysis and custodial procedures in accordance with the international standard for laboratories.
20. In an email dated 8 February 2018 Ms Coston waived her right for the “B” sample to be analysed and never suggested before or during the hearing that there has been any departure from the prescribed international standard nor challenged or disputed the adverse analytical finding.
21. Ms Coston was given the opportunity after the hearing to have the supplement tested at the Doping Control Laboratory of the University of the Free State. The analysis (dated 5 March 2018) of the Evolve Prolong BCAA supplement provided however showed that it was not the source of the prohibited substance. Ms Coston requested on 6 March 2018 to have her “B” sample tested and also requested a second hearing.
22. SAIDS objected on 6 March 2018. Ms Coston was notified on 6 February 2018 that she needs to inform SAIDS by 13 February 2018 if she wants her “B” sample analysed. She was further informed that if SAIDS is not timeously informed to have her “B” sample analysed, it is assumed that Ms Coston waived her right to have her “B” sample analysed. The request to have her “B” sample tested and a second hearing was therefore not granted by the Panel.
23. Ms Coston is consequently deemed under the SAIDS Anti-Doping Rules to have committed an Anti-Doping Rules Violation.

D THE VERDICT

24. The Doping Hearing Panel is satisfied that Ms Coston is indeed guilty of violating Article 2.1 of the 2016 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as particularised in the charge sheet served on Ms Coston on 9 February 2018.

E THE SANCTION

25. The remaining question is the nature of the sanction which should be imposed in respect of the violation of Article 2.1.1 of the Rules.
26. Article 10.2 of the Rules is headed “***Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance and Prohibited Method***”

Article 10.2.1 provides that the period of *Ineligibility* shall be four (4) years where:

- 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.

- 10.2.1.2 The anti-doping rule violation involves a Specified Substance and SAIDS can establish that the anti-doping rule violation was intentional.
- 10.2.2 If Article 10.2.1 does not apply, the period of *Ineligibility* shall be two (2) years.
- 10.2.3 ... the term intentional is meant to identify those athletes who cheat. The term therefore requires that the athlete or other person engaged in conduct which he or she knew constituted 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 disregarded that risk.
27. The substances identified in her sample was *4-methylhexan-2-amine (Methylhexanamine)*. *4-methylhexan-2-amine (Methylhexanamine)* is categorised under **Class S.6 Stimulants** on the *World Anti-Doping Code 2017 Prohibited List International Standard*. These are specified substances for purposes of the Anti-Doping Rules in terms of Article 4.2.2.
28. This Panel must decide whether SAIDS established the requirements of Article 10.2.1.2 and if Ms Coston did everything she could reasonably possibly do to ensure that the supplements she used was free of prohibited substances.
29. SAIDS argued in the submissions made that the standard of proof in this case is to the comfortable satisfaction of the hearing panel. This means that SAIDS must prove to the comfortable satisfaction of the Panel that the athlete knew there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. This is referred to as indirect intent.

F DEGREE OF FAULT

30. Ms Coston's degree of fault is in the Panel's view the key issue. What degree of fault can be attributed to Ms Coston? She is required to establish that her fault or negligence when viewed in the totality of the circumstances was not significant in relationship to the anti-doping violation. In assessing her degree of fault, the circumstances considered must be specific and relevant to explain her departure from the expected standard of behaviour.
31. Ms Coston testified that she understands the dangers and risks of taking supplements. She mentioned no less than eight times the risk involved in taking supplements during her testimony.
32. On Ms Coston's own version, she admitted that she was at fault. Ms Coston should have and must have known that she should be more cautious and to first check that she would not fall foul of the SAIDS Anti-Doping Rules. Ms Coston's reliance on her own research which she conducted does not render her faultless.

33. She had access to many resources such as WADA or SAIDS, Informed Sports, the team doctor of Hockey South Africa (Dr Gavin Shang) and even at her workplace. Ms Coston testified that she is a registered chiropractor at the Morningside Chiropractic & Sports Injury Clinic and the Wanderers Sports Medical Centre. These clinics also employ nutritionists, dieticians, biokineticists and sports physicians. Despite having access to all of these professional experts, she decided not to consult with anyone of them before considering taking the supplement. Instead, she relied on the advice of Claudette Renney, a brand ambassador of Evolve supplements. Ms Coston preferred to rely on the advice of an unqualified person with no medical knowledge or background.
34. Ms Coston testified that she did visit the website of Evolve and conducted her research on the supplement called Evolve Prolong BCAA before using it. However, the website clearly states that this product is to increase testosterone and growth hormones. Ms Coston once again disregarded this warning and proceeded to use the supplement. She further testified that she used the SAIDS website to assist her in her due diligence search for prohibited substances. However, the SAIDS website search engine is a Medication Check tool not geared for checking if supplements contain prohibited substances.
35. The fact that Ms Coston is an experienced and elite athlete competing at international level for South Africa must be taken into consideration. She is not only an elite athlete, but works within the medical field as a registered chiropractor under the title Doctor Coston. She is aware of the anti-doping regulations and the purpose it serves. This Panel therefore demands a higher standard of care from Ms Coston. The level of care exercised by Ms Coston fails the expected standard of care.
36. It is further required of Ms Coston to establish how the *Prohibited Substance* entered her system in terms of Article 2.1. With regards to the prohibited substance (Methylhexanamine) found in her urine sample, Ms Coston claimed that Evolve Prolong BCAA was the reason for her adverse analytical finding. There was no evidence before this Panel that the supplement was in fact contaminated with the mentioned prohibited substance. Ms Coston was given the opportunity to have the supplement tested at the Doping Control Laboratory of the University of the Free State. The analysis of the supplement provided however showed that it was not the source of the prohibited substance and failed to establish the source of the prohibited substance.
37. Ms Coston clearly violated the SAIDS Rules as the Rules are applied in terms of strict liability and she knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk and nevertheless proceeded to participate in the competition. She has not exercised “the greatest vigilance” or “the utmost caution” and committed a fault. [See CAS 2006/A/1133 *WADA v Stauber & Swiss Olympic* para 37].

38. In determining the degree of fault, this Panel applied the three categories of fault as considered in the matter of *Cilic v ITF* (CAS 2013/A/2237) and found that Ms Coston fell within the significant degree of fault and agrees with the following submissions made on behalf of SAIDS: (1) She failed to provide concrete evidence as to what the actual source of the Methylhexaneamine was found in her urine sample; (2) Ms Coston did not meet the duty of care or exercise “utmost caution” expected from a professional athlete; (3) The prohibited substance found in her system is a specified substance namely, a specified stimulant which is a performance enhancing substance prohibited in-competition and Ms Coston was performing on the field at a greater advantage compared to her teammates and opponents; (4) She took a supplement which advertises that it increases testosterone and growth hormones which are in fact prohibited in sports in any case, so this again shows there was no caution taken by Ms Coston when deciding to purchase this product and ingest it; (5) She did not seek professional advice before taking this supplement, neither did she consult her national team doctor. A higher level of duty of care is held for elite, international level athletes and she did not meet this standard prescribed to her. She was reckless in the precautions she claimed she took. She did not do everything necessary to ensure this product was clean and if this is in fact the product that is the source of her adverse analytical finding.

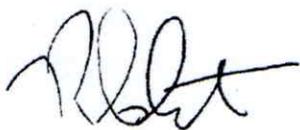
G DECISION

39. After due consideration of the specific facts of this case, the Panel finds that Ms Coston did fall short of the high standards imposed on an athlete to exercise utmost caution to avoid an anti-doping rule violation.
40. Ms Coston was not provisionally suspended and the Doping Hearing Panel hereby declares Ms Coston **ineligible for a period of four (4) years with effect from 19 February 2018** (being the date of the hearing).
41. Ms Coston further forfeits any results, medals and prizes obtained during the Professional Hockey League (PHL) tournament held in Johannesburg under the jurisdiction of the South African Hockey Association on 9 December 2017 in terms of Article 10.1 of the Rules.

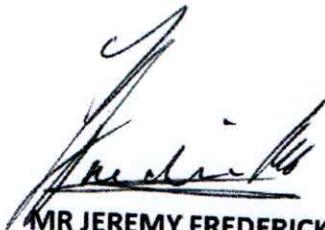
Accordingly the Doping Hearing Panel’s sanction is as follows:

“Having found Ms Bernadette Coston, guilty of an Anti-Doping Rule violation in terms of Article 2.1 of the 2017 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as particularised in the charge sheet served on Ms Coston on 9 February 2018, Ms Coston is hereby declared ineligible to participate in any competition or other activity as contemplated in Article 10.2 for a period of four (4) years with effect from 19 February 2018.”

DATED at JOHANNESBURG this 20th day of March 2018.



PROF RIAN CLOETE



MR JEREMY FREDERICKS



DR SELLO MOTAUNG