

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel**

**United States Anti-Doping Agency,
Claimant**

v.

AAA No. 31-190-0016401

**Joseph Pastorello,
Respondent**

OPINION

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND AND AWARD as follows:

I. HISTORY

On December 21, 2001, the above matter was heard before a panel of three Arbitrators selected pursuant to the American Arbitration Association Procedures for Arbitration initiated by the United States Anti-Doping Agency ("USADA") at the request of Joseph Pastorello ("Respondent").¹

The Claimant, USADA, was represented by Terry Madden, USADA CEO and by William Bock, III, attorney. The Claimant represented the interest of USA Boxing, the national governing body responsible for upholding the Anti-Doping Rules of the Association Internationale De Boxe Amateur ("AIBA"), the International Federation for the sport of boxing. The Respondent was

¹The Commercial Arbitration Rules of AAA were modified by Supplementary Procedures which apply to arbitration for Olympic Movement Testing.

represented by his attorneys, Mr. James T. Gray and Mr. Michael J. Pierski. Also in attendance for most of the arbitration was John Ruger, USOC Athlete Ombudsman.

II. BACKGROUND

The Respondent reached the semi-finals at the United States Men's National Boxing Championship held at Colorado Springs, Colorado on March 16, 2001.² At the conclusion of his event, the Respondent was required to submit to drug test pursuant to USADA Regulations. The urinalysis was conducted at approximately 9:15 p.m. The Respondent completed the appropriate USADA Doping Control Official Record. He declared on that form that he had taken multivitamins, chelate minerals, "alphalpa," Creatine, essential fatty acids, and a green tea pill.

That same day the "A" and "B" urine samples were properly transported to the UCLA Olympic Analytical Laboratory in Los Angeles, California. They were received by the Laboratory on March 18, 2001, and were properly stored and labeled.³ The "A" sample was batch screened and determined to possibly contain nandrolone metabolites. As such, the "A" sample went through the confirmation procedures which were completed on March 29, 2001. The "A" sample was determined to contain a concentration of the 19-norandrosterone greater than 2 ng/mL and 19-noretiocholanolone, both nandrolone metabolites.

The Claimant was notified of the conclusions of the UCLA Laboratory as to the "A" sample. The Claimant notified the Respondent and gave him the option to have the "B" sample confirmation performed at the UCLA Laboratory. The Respondent elected to have the "B" sample confirmation

²The Respondent subsequently received the silver medal.

³Parties stipulated at the Arbitration that the collection of the sample was proper and that the chain of custody procedures were followed.

performed. On May 1, 2001, the UCLA Laboratory issued its report concluding the "B" sample contained 19-norandrosterone at a concentration greater than 2ng/mL and 19-noretiocholanolone.

The Respondent was notified of the positive results of the "B" sample on or about May 4, 2001, and of the Claimant's referral of the matter to USADA's Anti-Doping Review Board ("ADRB"). The Respondent was also advised that he had the right to submit written information to the ADRB. The ADRB subsequently recommended that the Respondent be suspended from boxing up to two years and that the results of his competition in the Men's National Boxing Championships be declared invalid. The Respondent was advised of the recommendation and elected to contest it. Pursuant to Section 9.b.ii, pp. 5-6, of the USADA Protocol for Olympic Movement Testing, the Respondent chose to proceed to a hearing before the AAA arbitrators selected from a pool of the North American Court of Arbitration for Sport ("CAS") Arbitrators.

III. APPLICABLE LAW

The parties agreed that certain rules were applicable to this Arbitration.

A. USADA Protocol for Olympic Movement Testing.

The USADA Protocol for Olympic Movement Testing Section 9.b.i, p.6., provides that "(i)f the sanction is contested by the athlete, then a hearing shall be conducted pursuant to the procedures set forth below."

The procedures at v., p. 6, provide:⁴

In all hearings conducted pursuant to this procedure the applicable IF's categories of prohibited substances, definition of doping and sanctions shall be applied. In the event an IF's rules are silent on an issue, the rules set forth in the Olympic Movement Anti-Doping Code shall apply. Notwithstanding the foregoing; (a) the IOC Laboratories used by USADA

⁴Identical language is found in R-33(c) in Annex D under the USADA Protocol.

shall be presumed to have conducted testing and custodial procedures in accordance to prevailing and applicable standards of scientific practice. This presumption can be rebutted by evidence to the contrary, but the accredited laboratory shall have no onus in the first instance to show that it conducted the procedures other than in accordance with its standard practices conforming to any applicable IOC requirements; (b) minor irregularities in sample collection, sample testing, or other procedures set forth herein which cannot reasonably be considered to have effected the results of an otherwise valid test or collection shall have no effect on such results; and (c) if contested, USADA shall have the burden of establishing the integrity of the sample collection process, the chain of custody of the sample, and the accuracy of laboratory test results by clear and convincing evidence unless the rules of the applicable IF set a higher standard.

B. AIBA Articles of Association and Rules for International Competition and Tournaments.

The AIBA is a "non-profit making international organization comprising the Amateur Boxing Associations of all countries which have a national governing body controlling amateur boxing and which, having accepted and agreed to abide by the Articles herein contained, have been affiliated. . . ." Article I.B., p. 3. USA Boxing is the national governing body for the sport of amateur boxing in the United States that is recognized by and affiliated with AIBA and which sanctioned the Men's National Boxing Championship in compliance with the AIBA Rules and Articles.

The AIBA Rules at p. 52 further provide:

Rule XXII: Administration of Drugs, Etc.⁵

- A. Doping. The administration of or use by competing boxer of any substance foreign to his body or of any physiological substances taken in abnormal quantity or taken by an abnormal route of entry into the body with the sole intention of increasing in an artificial and unfair manner his/her performance/i.e. 'doping' / is prohibited. The AIBA Doping Regulations are in conformity with those of the IOC and do not differ in any respect. These regulations are by-law to this Rule.

⁵Rule XXII of the AIBA rules at pp. 47-48 has identical language to Rule XXII in the AIBA Articles.

- D. Prohibited Drugs. The IOC list of banned substances shall constitute AIBA's list of banned substances. Any boxer taking such substances or any official administering such substances shall be subject to the penalties. AIBA may ban additional substances upon the recommendation of the AIBA Medical Commission.
- C. **Doping Regulations of AIBA contained in the Medical Handbook of Amateur Boxing.**

The Medical Handbook of AIBA is also applicable. Appendix I at 44-5 provides that:

Article XXVIII/C. Doping.

2. A boxer who has been found guilty of doping may be punished by suspension from any competition for a period up to two years and, in case of recurrence, disqualification for lifetime.
4. In the case of doping being proved, the result of the competition shall be declared invalid.

The Doping Regulations of AIBA provide that they are "in conformity with those of the IOC and do not differ in any respect." Doping Regulations of AIBA, p. 33. The Regulations, Section C, p. 33, specifically prohibit anabolic agents. The Regulations provide examples of anabolic androgenic steroids including nandrolone and "related substances."⁶ The Regulations at p. 36 further provide the following caution:

CAUTION: This is not an exhaustive list of prohibited substances. Many substances that do not appear on his [sic] list are considered prohibited under the term "and related substances." Athletes must ensure that any medicine, supplement, over-the-counter preparation or any other substance they use does not contain any Prohibited Substance.

D. **Olympic Movement Anti-Doping Code:**

⁶The Regulations at p. 36 also require all IOC accredited laboratories to report findings in males of more than 2 nanograms/millilitre 19-norandrosterone.

The applicable Olympic Movement Anti-Doping Code ("OMAC") provisions are as follows:

Chapter I, Article 1, p. 9

RELATED SUBSTANCE means any substance having pharmacological action and/or chemical structure similar to a Prohibited Substance or any other substance referred to in this Code.

Chapter II, Article 2

Doping is:

1. The use of an expedient (substance or method) which is potentially harmful to athletes' health and/or capable of enhancing their performance, or;
2. The presence in the athlete's body of a Prohibited Substance or evidence of the use thereof or evidence of the use of a Prohibited Method.

Chapter II, Article 3

1. In a case of doping, the penalties for a first offense are as follows:

- b.) If the Prohibited Substance used is one other than those referred to in paragraph a) above:
 - i) A ban on participation in one or several sports competitions in any capacity whatsoever;
 - ii) A fine of up to U. S. \$100,000;
 - iii) Suspension from any competition for a minimum of two years. However based on specific, exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for possible modification of the two-year sanction.
- (p. 13)

3. Any case of doping during a competition automatically leads to invalidation of the result obtained (with all its consequences, including forfeit of any medals and prizes), irrespective of any other sanction that may be applied, subject to the provisions of point 4 of this article. (p. 15)

Chapter II, Article 4

2. Evidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions regarding the use of anabolic androgenic steroids.

4. The success or failure of the use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was used or attempted for the offense of doping to be considered as consummated. (p. 17)

The OMAC specifically prohibits anabolic agents including nandrolone and related substances.

IV. TESTIMONY

On December 11, 2001, the Claimant filed a Motion to Exclude Evidence, requesting that the Respondent and his expert, Dr. David Black, be prohibited from testifying about the hair sample analysis and methodology. The Claimant further objected to two of the Respondent's witnesses, Ms. Doleschal and Professor O'Leary, who were identified as experts expected to testify as to their opinions with respect to the intent of the AIBA Doping Regulations. The Arbitrators considered the Motion, the Response, and the other pertinent documents filed by each party. On December 19, 2001, the Motion was granted in part and denied in part. The Arbitrators allowed the Respondent and Dr. Black to testify about the hair sample analysis and methodology. The Arbitrators noted that the parties had presented the pertinent regulations to them with respect to the standards. The Arbitrators ruled that the Respondent's two witnesses would not be allowed to testify as to their

opinions with respect to that issue as the Arbitrators would make the decision as to the appropriate legal standard.

The Arbitrators heard testimony from a variety of witnesses. Several additional exhibits were introduced at the Arbitration. The key testimony is summarized below.

Dr. Don H. Catlin, on behalf of the Claimant, testified about the procedures used by the UCLA Laboratory. He specifically testified that all IOC procedures were followed with respect to the "A" and "B" samples. Dr. Catlin testified that the analysis of the Respondent's urine samples showed that he had approximately 30 ng/mL of 19-norandrosterone and noretiocholanolone. He indicated that the sources could have been over-the-counter substances or an injection. The laboratory results do not tell how prohibited substances get into an athlete's body. Dr. Catlin opined that this reading was not due to endogenous production or birth control pills. He further indicated that vigorous exercise does not contribute to a positive reading of nandrolone metabolites.

Dr. Catlin had been advised of the possible testimony regarding the hair follicle test. He testified that the hair test was not an approved IOC method. He also testified that based on studies he was fully aware that many over-the-counter substances were contaminated with nandrolone metabolites. He indicated that even if one capsule in a container was negative for a prohibited substance, there was no guarantee that the remaining capsules would also be found negative.

The Respondent testified in his own behalf. He testified that he had always passed all other drug tests. He indicated that in January of this year he began using new supplements from his new sponsor, Apex Fitness. He believed that they were a reputable company and based this belief on his review of their website. He indicated that he checked all the labels of the new supplements that he received in January in addition to looking up the list of substances in his various resource materials.

He indicated that although he is not monetarily compensated by Apex Fitness, he does receive the supplements free of charge. He had not been tested before on the new supplements from Apex.

The Respondent testified that on March 16 he was very tired and exhausted having just successfully completed the semi-final round. He admitted that his disclosure form did not include some of the new Apex nutritional supplements he had just begun using, including Energen and High Performance.

The Respondent testified that after he was notified of the "A" and "B" positive readings, he had two pills from each bottle of Volumizer and Energen analyzed by a commercial laboratory, Aegis Analytical Laboratories in Nashville, Tennessee. Those two pills were negative for nandrolone metabolites. The remaining pills in the bottles were not tested. Further, the Respondent testified that he has continued to take these supplements.

The Respondent also testified regarding the hair follicle test performed on July 26, 2001, also by Aegis Analytical Laboratories. The hair samples were taken from the Respondent's armpit. That test was also negative.

The Respondent is currently the football coach at the United States Air Force Preparatory School. He indicated that he has sponsored his football team to receive any Apex supplements at wholesale prices. These include the supplements that he was taking at the time he tested positive for nandrolone metabolites. The Respondent testified that after the positive test results, he boxed in a dual meet in London.

The Respondent testified that he used the various nutritional supplements to improve his recovery after training. He also indicated that he took these supplements to increase his energy, his strength, and his endurance.

The Respondent testified that he was aware that, including Androplex, Apex produced products that contained anabolic androgenic steroids. He was aware that such products were prohibited substances. He testified he had never taken Androplex.

The Respondent testified he had never read any of the many news articles about athletes who had tested positive for prohibited substances after taking certain supplements. He further testified that he was not familiar with any of the Olympic athletes who were disqualified and lost medals at the 2000 Summer Olympic Games in Sydney as a result of their positive tests for anabolic steroids. He had not checked the USADA website or contacted the hotline prior to taking the many new Apex nutritional supplements. The Respondent testified that he read the labels on the products entitled "supplement facts," which set forth the various properties of the nutritional supplements.⁷

Dr. David Black, Aegis Analytical Laboratories, testified on behalf of the Respondent about the negative test results for the Respondent's hair follicle test. As a result of the information that he reviewed from Dr. Catlin, Dr. Black had no professional disagreement with respect to the Respondent's positive laboratory urine test results. Dr. Black agreed that a negative hair result should not overrule a positive urine test result. He further testified that most scientific literature on hair testing deals with testing on animals. He could not recall any peer review analysis as to the validity of tests on underarm hair.

The Claimant called Dr. Diana G. Wilkins, Co-Director, Center for Human Toxicology, University of Utah. Dr. Wilkins opined that Dr. Black did not use a low enough cutoff for testing to detect anabolic steroids. She further opined that his laboratory did not have enough hair sample

⁷For instance, the Volumizer label reviewed by the Respondent indicates that it contains Creatine.

to properly test. She indicated that more research was needed in the area of hair follicle testing for anabolic steroids.

Colonel Laurence Fariss, the Respondent's immediate supervisor since July 1, 2001, testified as to the Respondent's character. He admitted that he had no knowledge of the Respondent's diet or the use of his supplements.

Ronald Simms, the Respondent's former boxing coach, testified also as a character witness. He stated that he had never encouraged the Respondent to take performance enhancing drugs. He indicated that he was aware that the Respondent took Creatine and various supplements. He testified that he had cautioned the Respondent on the use of Creatine because it is unknown what the long term effect may be on an athlete. He also testified that he was aware that supplements were not regulated by the FDA.

V. LEGAL ARGUMENT

The Claimant argued that even though the AIBA rules concerning the definition of doping are not identical to the IOC rules, in substance the rules of both list the prohibited substances which, when found to be in an athlete's body, will be considered doping. In addition, the Claimant argued that with respect to the intent of the athlete, both the IOC and AIBA rules follow a two-pronged approach: one prong which defines doping strictly based on the results of the drug test and the second prong which considers the intent (or the lack of intent) of the athlete or other mitigating factors in justifying an increase or reduction in the required sanction. The IOC sanction is suspension from competition for a minimum of two years in addition to the invalidation of the result obtained. The AIBA sanction is disqualification and a suspension "up to two years."

The Claimant further argued that the AIBA rules have two independent definitions of doping: one which is based on the presence of prohibited substances in an athlete's urine (Rule XXII.D of the AIBA Rules) and the other which is based on the taking of a substance foreign to his body which is intended to increase an athlete's performance. (Appendix I, AIBA Articles and Rules, Rule XXII.A.)

The Claimant argued that there is no proof of intent required to find doping and that the intent of the Respondent only affects the sanction to be applied. Further, the Claimant argued that the Respondent cannot rely on a lack-of knowledge as a special circumstance which might reduce his sanction, but rather he is required to undertake an investigation of the contents of any substance ingested in his body. Mitigating factors are to be taken into account to reduce the maximum sanction and that is the only determination to be made by the Arbitrators, according to the Claimant.

The Claimant also argued that the Respondent did not use good judgment in taking the Apex Fitness nutritional supplements, continuing to use them, and in making them available to the young athletes under his charge. Thus, the maximum sanction should be applied to the Respondent.

The Respondent argued that the Arbitrators needed to address two issues: 1) the applicable rules and the resulting determination of whether a doping offense had been committed; and 2) the sanction to be applied if a doping offense has been committed.

The Respondent argued that AIBA Rule XXII.A indicates intent must be proved in order to find doping by the Respondent, in addition to a showing that the substance was taken in an artificial way and unfair manner. The Respondent argued that he did not intend to violate the AIBA rules, that he read the labels of the nutritional supplements he took, that he consulted the USOC list of banned substances and the information on Apex Fitness' web site. There was no evidence from the

Claimant to support a finding that any substance was taken in an artificial way and unfair manner. The Respondent argued that he was honest and forthright in identifying the supplements he had taken.

Further, the Respondent argued that AIBA wrote the rules, that AIBA added its own language in addition or substitution for the IOC rules, thus showing that the IOC rules alone were not to be applied, but rather both the IOC and AIBA rules. If AIBA had intended the mere presence of prohibited substances to constitute doping, Rule XXII.A. would not be necessary.

The Respondent further stated, citing Aanes v. FILA, (CAS 2001/A/317), that recent cases of CAS indicated a move away from a finding of doping based on the presence of a prohibited substance in an athlete's urine (so called "strict liability") to a finding of doping based on the intent on the part of the athlete to enhance his performance. Thus, argued the Respondent, since the Claimant had not shown that the Respondent intended to take a substance in an artificial way and unfair manner to improve his performance, no finding of doping could be made by the Arbitrators.

With respect to the sanction, the Respondent argued that if the Arbitrators find that he violated the AIBA Doping Regulations in accordance with Article XXVIII.C.2 of the Medical Handbook of AIBA, which provides that a "boxer who has been found guilty of doping may be punished by suspension from any competition for a period of up to two years..." (emphasis added), the Arbitrators should find that the Claimant did not meet its burden to show that the Respondent had intended to take a substance in an artificial way and unfair manner to improve his performance, nor did the Claimant investigate the circumstances under which the Respondent tested positive. Thus, the Respondent argued that a penalty commensurate with the facts presented by the Respondent should be imposed, less than the two years recommended by the Claimant.

VI. FINDINGS

A. Jurisdiction.

Pursuant to the provisions of the USADA Protocol for Olympic Movement Testing Section 9.b.i, p. 5, the Arbitrators have jurisdiction to decide whether the Respondent committed a doping offense as set forth in the AIBA Rules and, if so, what the sanction with respect to such offense shall be.

B. Burden of Proof.

Although the USADA Protocol for Olympic Movement provides that the IOC Laboratories used by the USADA shall be presumed to have conducted testing and custodial procedures in accordance to prevailing and applicable standards of scientific practice (USADA Protocol for Olympic Movement Testing Section 9.b.v (a), p. 6), the Claimant stated at the outset of the hearing that if the Respondent would not stipulate to the validity of each element of the testing, the Claimant would bear the burden of establishing the integrity of the sample collection process, the chain of custody of the sample, and the accuracy of laboratory test results by clear and convincing evidence without Respondent having to offer proof to contest such elements, in order that the Respondent and similarly situated athletes have the benefit of this evidence. Although this is a laudable objective in light of the recent introduction of these procedures, the Arbitrators note that it is unnecessary and could unduly lengthen the hearing. The USADA Protocol does specifically identify which party is to bear the burden of proof under these circumstances and there is no reason for Claimant to prove evidence which the Respondent does not have evidence to contravene.

The Respondent's expert did, upon examination of evidence provided to the expert by Claimant, concur with the Claimant's proof that the lab tests were accurate. Thus, there was no

contest to the tests and though Claimant presented evidence concerning the test results, this was not required.

C. Doping.

The Arbitrators are satisfied that the Respondent committed a doping offense under the relevant AIBA Regulations and the OMAC. There were no issues with the chain of custody of the test sample or the accuracy of the laboratory test results. See USADA Protocol Section 9(b)(v) and the Modified AAA Rule 33(e).

The Arbitrators were not persuaded by the Respondent's hair analysis. This type of evidence, particularly when conducted several months after the event, has little value in discrediting a positive doping case. Even the Respondent's own expert witness agreed that a negative hair follicle test would not invalidate a positive urine test. Thus, these Arbitrators follow other CAS decisions that have disregarded hair analysis in doping cases. See Baumann v/ IOC et al. CAS OG 00/006 at p. 14, and Bouras v/ IJF, CAS 98/214 at p.19.

The Arbitrators do not concur with the argument of the Respondent, that intent must be proved in order to find doping by the Respondent. While the AIBA rules certainly fall "short of the clarity and certainty desirable in an area as sensitive as doping," see Aanes v. FILA, CAS 2001/A/317 at p.15, the AIBA Doping Regulations when read in conjunction with the OMAC sufficiently state that a doping violation can be proved either through: (1) proof of the use of a banned substance, or (2) proof of the presence in the athlete's body of a prohibited substance.

Furthermore, and contrary to Respondent's argument, the Arbitrators do not find that recent CAS cases are moving away from a "strict liability" principle to one that requires an element of intent. The theory of so-called "strict liability" in doping cases is well established and is based upon

the fundamental principle of fairness in sport and "providing a level playing surface" for all competitors. See Aanes at p.17, and UCI v. Moller, CAS 99/A/239 at p. 9. An athlete's intent is relevant only to the determination of an appropriate sanction, not to the determination of a doping offense. As stated in Aanes, at p. 20, "doping only happens in the sphere of the athlete: he/she is in control of his/her body, of what he/she eats and drinks, of who has access to his/her nutrition, of what medication he/she takes, etc. In these circumstances it is appropriate to presume that the athlete has knowingly or at least negligently consumed the substance which lead to the positive doping test." The Respondent in this case certainly negligently consumed the nutritional supplements which could have caused him to test positive.

Since the Arbitrators find that the Respondent committed a doping offense, his results obtained at the 2001 U.S. National Boxing Championships are void. See OMAC, Ch. II, Art. 33, p. 13 and AIBA, Article XXVIII.C.4.

D. Sanction.

The AIBA Regulations, in Rule XXVIII. C, provide that a "boxer who has been found guilty of doping may be punished by suspension from any competition for a period of up to two years...." It is well established in CAS jurisprudence, that when a doping offense is proven, the athlete, in this case the Respondent, has the burden to prove that the prohibited substance in his body was not due to any intent or negligence on his part in order to obtain a reduction in the sanction proposed. See Aanes at p.24: see also Haga v. FIM, CAS 2000/A/281 at ¶ 53, and Meca-Medina v. FINA, Majcen v. FINA, CAS 99/A/234 & CAS 99/A/235, p. 16. Otherwise, all athletes who test positive would simply claim they had no idea how the substance found its way into their bodies, and their sanctions would be reduced. Therefore, the burden is shifted to the athlete to prove mitigating factors that

would justify a lesser sanction than the maximum of two years.

The Respondent advances no theories which bear on the question of whether he intentionally or negligently committed the offence of doping. Unlike Aanes, the athlete in that case was able to prove that he had consumed a specific nutritional supplement and that it was contaminated with nandrolone precursors. The facts of this case are more like the case of Leipold v. FILA, CAS 2000/A/312, in that the athletes were not able to establish which of many nutritional supplements may have caused the elevated level of nandrolone metabolites.

However, taking into consideration the recent history of the many nandrolone doping cases, the Respondent's esteemed character, and relying upon the Claimant's own expert witness who testified that the test results were most likely due from contaminated nutritional supplements, the Arbitrators give the Respondent the benefit of the doubt and find that he did not intentionally commit the offence of doping.

Even if Respondent consumed contaminated products unintentionally, the Arbitrators note that the risk of consuming nutritional supplements contaminated with prohibited substances is well-known in the sporting world. CAS cases have been taking judicial notice of this fact since at least 1999. Meca-Medina at p. 29. See also Aanes at p. 6.

The Respondent did some limited research as to what was in the products as stated by the manufacturer, Apex, on the "Supplement Facts" label, but did not research the actual ingredients. He also admitted that he did not call the USADA hotline. Further, he was aware that some supplements could contain banned products. His testimony that he did not have knowledge of what was going on in the sports world with respect to banned substances being found in numerous nutritional supplements, particularly with respect to the athletes involved in similar issues in the

Olympics in Sydney, ~~in Sydney~~. Even his coach had warned him about supplements and the uncertainties surrounding them. Furthermore, the Respondent ~~admitted that he failed~~ to declare several substances on the doping control form, one of which he had analyzed several months after his positive test.

For all the above reasons, the Arbitrators find that the Respondent was negligent in committing the doping offence.

There are other factors that the Arbitrators have considered in determining the length of the Respondent's sanction. First, the Arbitrators feel compelled to follow the example of the arbitrators in Leipold at p. 15, and express our concern over the continuing debate regarding the possible contamination of nutritional supplements with nandrolone. The Arbitrators urge the Claimant, the USOC, and the various sport federations to do everything possible to obtain government intervention in this area, and in the meantime educate athletes about the risks associated with the consumption of nutritional supplements.

Second, the Arbitrators are concerned that the Respondent is providing the suspect nutritional supplements at a wholesale cost to his football team. Considering that there is a high likelihood of nutritional supplements being tainted based on the repeated occurrence of positive drug tests of athletes taking nutritional supplements, and that Apex manufactures prohibited substances which could contaminate otherwise appropriate nutritional supplements, the Respondent is reminded of the very harsh penalties imposed by the OMAC for trafficking prohibited substances (OMAC Chapter II, Article III, Section 6).

Lastly, while neither of the parties made an issue of it, the Arbitrators note that for whatever the reason, there were some delays in bringing this case to a hearing. The Arbitrators emphasize that it is in the best interest of athletes as well as all the Olympic family members to resolve these doping allegations as quickly as possible. To do otherwise, would be to frustrate the purpose of the anti-doping efforts and to unfairly burden the athlete by keeping the athlete under a cloud of suspicion until the matter is resolved. Any delays could operate to deny other athletes the right to compete in competitions due to the accused athlete occupying a competing position in an event conducted during the time that the accused athlete is pursuing his/her hearings.

When taking into consideration all of the elements of this case, and establishing a penalty that reflects and is "not disproportionate to the guilt of the athlete" (see Haga v. FIM, CAS 2000/A/281 at p. 15), according to the discretion provided for in the AIBA Regulations, the Arbitrators conclude that Respondent should be suspended from any competition for 18 months. Since the Respondent has continued to be eligible to compete pursuant to USADA Protocol Section 9.b.vii, p. 7, the suspension will run from the date of this Opinion.

In addition, in light of the Respondent's actions with regard to providing the supplements to his football team, and as a condition of the reduction of the suspension from two years to 18 months, the Respondent must advise his football team of the dangers of prohibited substances being found in over-the-counter nutritional supplements, including the products that he currently uses. If the Respondent chooses not to comply with this condition, the two year sanction will take effect beginning with the date of this Opinion.

The Respondent must confirm to the Claimant in writing through his attorneys within 30 days of the date of this Opinion that he has communicated these dangers to his team and will

continue to do so as long as he is offering such supplements to his team.

In view of the various rules and regulations applicable to this case, each party shall bear its own costs and attorney's fees.

The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne entirely by USADA.

Carolyn B. Witherspoon

CAROLYN B. WITHERSPOON, Arbitrator and Panel President

MAIDIE OLIVEAU, Arbitrator

PERRY TOLES, Arbitrator

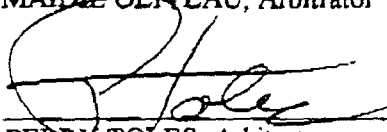
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CAROLYN B. WITHERSPOON, Arbitrator and
Panel President

MAIDIE OLIVEAU, Arbitrator



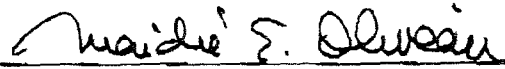
PERRY TOLES, Arbitrator

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CAROLYN B. WITHERSPOON, Arbitrator and
Panel President



MAIDIE OLIVEAU, Arbitrator

PERRY TOLES, Arbitrator