

**BEFORE THE ANTI-DOPING TRIBUNAL OF SOUTH AFRICA** (Instituted in terms of section 17(2) (a) of Act No. 14 of 1977, as amended by Act No. 25 of 2006)

**HELD AT SUPERSPORT PARK, CENTURION**

**THE SOUTH AFRICAN INSTITUTE FOR**

**DRUG-FREE SPORT 2022/41**

**Applicant**

and

**THOMAS OOSTHUIZEN**

**Respondent**

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THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' DISCIPLINARY TRIBUNAL HELD ON THURSDAY 01 JUNE 2023 AT 17H00 HOURS AT SUPERSPORT PARK, CENTURION PRETORIA

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The Tribunal consisted of the following duly appointed Members:

Mr Raymond Hack	-	Chairperson
Mr M Booth	-	Member
Dr. Sello Motaung	-	Member
Mr Shane Wafer	-	Acting Prosecutor on behalf of South African Institute for Drug-Free Sport
Ms Christina Skhosana	-	South African Institute for Drug-Free Sport
Mr W Dixon	-	Acting on behalf of the Respondent

## **INTRODUCTION**

The Chairman welcomed the members and the parties and confirmed that the hearing was in terms of the SAIDS Anti-Doping Rules. He inquired as to whether there was any conflict of interest, to which the parties responded that there was no conflict of interest. He further advised that this matter was a hearing that would be conducted as a Sports Tribunal Hearing and not in terms of any rules of a Court of Law.

He informed the parties that the hearing panel would review and assess the evidence given by any witnesses as well as any written submissions made by both parties.

## **PROCEEDINGS BEFORE THE TRIBUNAL**

### **1. BACKGROUND TO THE MATTER**

- 1.1 On 16 October 2022, SAIDS conducted a test mission at a Boxing South Africa ("**BSA**") sanctioned event:- "5th Element Promotions' Battle of the Warriors 7 -Thomas Oosthuizen vs. Limbani Lano" (the "**Event**") held in Hammanskraal, South Africa.
- 1.2 Immediately after the bout, in the Event which Mr. Thomas William Oosthuizen ("**the Athlete**") was competing, the Athlete was notified by the Doping Control Officer and duly participated in a partial urine *Sample* Collection Session, submitting two invalid urine *Samples* and thereafter allegedly failing to produce an additional third (valid) *Sample* upon request.
- 1.3 The invalid *Samples* were sent to the South African Doping Control Laboratory ("**SADoCoL**"), a World Anti-Doping Agency ("**WADA**") accredited laboratory in Bloemfontein, South Africa, where they were

analysed in accordance with the International Standard for Laboratories (“ISL”).

- 1.4 On 9<sup>th</sup> November 2022, the SADOCoL reported that no *Prohibited Substance(s), Prohibited Method(s), or their Metabolite(s) or Marker(s)* on the test menu were detected in either sample (**178762V**) or (**178518V**) according to the 2022 WADC Prohibited List, however, the SADOCoL found that the *Samples* were invalid, and that the Testing Authority (“TA”) should consider collecting a new sample from the athlete for testing.
- 1.5 On 10<sup>th</sup> November 2022, after conducting an internal investigation of the matter, including a review of the relevant WADC International Standards, and the Doping Control Form (“DCF”), the Doping Control Officers (“DCO”) Report Form and the Supplementary Report Form provided by Ms. Jannita Lucille Gouws (“Jani Hebler”), wife of the Respondent and Promoter of the Event on 16<sup>th</sup> October 2022, SAIDS notified the Athlete by way of Notice of Allegation (“NoA”), of a potential ADRV for a violation of Article 2.3 of the SAIDS ADR.
- 1.6 SAIDS exercised its discretion not to implement an Optional Provisional Suspension, in accordance with Article 7.4.2 of the ADR, however, SAIDS invited the Athlete to accept a Voluntary Provisional Suspension (“VPS”) which the Athlete declined to accept.
- 1.7 On 10<sup>th</sup> February 2023, the Athlete was charged with a violation of Article

2.3 of the SAIDS ADR for “Evading, Refusing and/or Failing to submit to a *Sample Collection*” without compelling justification.

- 1.8 On 2<sup>nd</sup> March 2023, the Athlete indicated to SAIDS that he wanted to convene a hearing in the matter. Despite the request and the Athlete’s allegedly failure to respond some eighteen (18) days later, and in a bid to avoid any potential delays, SAIDS requested the Registrar to convene an Independent Doping Hearing Panel (“**IDHP**”) on 20<sup>th</sup> March 2023 on behalf of the Athlete.
- 1.9 On 27<sup>th</sup> March 2023 and pursuant to Article 8 of the ADR, the SAIDS Registrar appointed an IDHP to hold a hearing on 1<sup>st</sup> June 2023.
- 1.10 On 28<sup>th</sup> April 2023, SAIDS provided the Athlete and the IDHP with the bundle of documents that were presented to the hearing panel.
- 1.11 On 11<sup>th</sup> May 2023, the Athlete presented his bundle of documents which he intended to rely upon, to the hearing panel.
- 1.12 On 18<sup>th</sup> May 2023, SAIDS and the Athlete presented their lists of witnesses whom they intended to call.
- 1.13. On 23<sup>rd</sup> May 2023, the Athlete submitted its written submissions in support of its defence of the charges.

## 2. **FORMAL CHARGES**

The Athlete is charged with the violation of Article 2.3 of the SAIDS ADR for Evading, Refusing and/ or Failing to Submit to *Sample* Collection by an *Athlete*.

## 3. **SUBMISSIONS BY MR WAFER ON BEHALF OF THE APPLICANT**

Mr Wafer expanded and highlighted the information as set out in his written submissions in terms of which he dealt with the following:

- 3.1 The charge against the Athlete;
- 3.2 The respective burdens of proof in the matter;
- 3.3 His contention that SAIDS has discharged its burden of proving that an ADRV has occurred;
- 3.4 That the Athlete had no compelling justification to refuse to submit to a further sample collection;
- 3.5 That the Athlete's version (including an assessment of any inaccurate versions of the Athlete's evidence as contained in his written submission) was incorrect;
- 3.6 The Authorities he relied upon and relevant to determine the potential *Consequences* of the Athlete's actions:

3.7 He formally introduced the witnesses called by him by means of Zoom which included Mr Thulani Phiri, the lead DCO, Mr Fahmy Galant, the SAIDS General Manager, and the Head of the Testing Lab Mr Hanno du Preez.

3.8 He thereafter introduced Mr Hilton Mtileni in person who presented his version of the events to the hearing panel which had occurred on the day in question, and the procedure followed during and after the Event.

3.9 **SUBMISSIONS BY THE RESPONDENT**

Mr Dixon, on behalf of the Respondent, highlighted the information contained in his written submission and called the first of his two witnesses on behalf of the Respondent, namely:-

1. Mr Thomas Oosthuizen who advised the hearing panel of his interpretation of what had transpired on the night. He indicated that he had been tested many times in the past and in fact had a good relationship with the DCO Mr Hilton Mtileni, and in fact had never refused to be tested a third time but had requested that such test be conducted after he had had dinner with his wife.
2. The second witness called was Mrs Jani Hebler, the Promoter of the Event and spouse of the Respondent who testified that she had been present at the testing of the first sample, as she wanted to see that everything was in order. She was not present at the second sample and indicated that she had other duties to perform on the night as the Promoter, which included dealing with outside personnel namely performing artists, paramedics, Boxing Board officials and Fighters, who needed to be paid in cash.

She confirmed that the Respondent was prepared to provide a third sample even though she did not understand the reason why, but only after she had had dinner with the Respondent. She conceded that she had very limited knowledge of doping procedures, as well as conceding that there was a conflict of interest in her roles as a Promoter and as the manager of the Respondent, due to duties required by a Promoter. She however denied that she had influenced the Respondent in not providing a third sample, and further denied that she had read, or was aware of the wording of the document which she signed in the presence of the DCO's, which effectively "called the Event".

#### 4. **THE APPROPRIATE RULES**

The appropriate rules to apply are those contained in Article 10.3 of SAIDS' ADR.

#### 5. **OBSERVATIONS**

- 5.1 From the testimonies submitted by all parties it is evident that the Respondent had been tested previously on numerous occasions and was well-versed in the sample collection procedure and that he had in fact always had a good relationship, specifically with Mr Hilton Mtileni, who had tested him on numerous occasions previously.
  
- 5.2 It was further evident that Mrs Jani Hebler, who acted as the third party and manager on behalf of the Respondent on the night of the Event, had no knowledge whatsoever of anti-doping procedures, and had imposed herself on both the Doping Control Officers and the Respondent by way of her conduct, which in the opinion of the panel was detrimental to the Respondent whether directly or indirectly which led to the Respondent having the unenviable task of *servicing two masters* – either his wife, or complying with his duty as an Athlete to comply with the provisions of the Anti-Doping Rules. The fact that a

third party (the Respondent's manager) may have influenced his decision not to submit to a third sample does not negate his duty as an Athlete to comply with his Anti-Doping obligations.

## 6. **FINAL REPRESENTATION**

In terms of an agreement at the initial hearing on 1 June 2023 at the closure of the hearing, both parties submitted written representation on 14 June, which representation was considered and evaluated by the panel.

## 7. **FINDINGS**

7.1 In view of all of the above, and after deliberation by the hearing panel, the panel found that the Respondent guilty of an ADRV violation by failing to provide a third sample as requested, in violation of Article 2.3 of the ADR.

Clearly, in the opinion of the panel the instructions/suggestions either "directly or indirectly" from the Respondent's wife/manager/promoter had an impact on the Respondent's failure to provide the necessary sample.

The above, unfortunately, does not constitute a compelling justification for a reduction in sanction and as such the Respondent is subject to a period of ineligibility of 4 (four) years in accordance with Article 10.3.1 of the ADR.

7.2 All the Respondent's results of 16 October 2022 at the relevant Event, as well as any other Event or competition in which the Respondent has participate since that date, to be immediately expunged/ disqualified together with any prize money or medals awarded in terms of Article 10.1 and 10.10 of the ADR.

7.3 In accordance with Article 10.13 the period of ineligibility shall commence from the date of the decision rendered by this hearing panel.



7.4 The Tribunal further imposed a cost order for the proceedings against the Respondent.

THUS DATED at JOHANNESBURG on this the 21 JUNE 2023



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**Raymond Hack (CHAIRPERSON)**

THUS DATED at JOHANNESBURG on this the 23 JUNE 2023



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**Dr. Sello Motaung**

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**Matthew Booth**

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**Matthew Booth**