

SA INSTITUTE FOR THE DRUG SPORT (SAIDS)

ANTI-DOPING DISCIPLINARY HEARING

ATHLETE : AUSTIN STEYN

SPORTS FEDERATION: CYCLING SOUTH AFRICA
UNION CYCLISTE INTERNATIONAL

DATE OF HEARING: 24th MARCH 2015

PLACE OF HEARING: CITY LODGE UMHLANGA
2 PALM BOULEVARD
UMHLANGA RIDGE

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL REPRESENTATIVE)
DR GLEN HAGEMANN
MR RISHI HANSRAJ (SPORTS ADMINISTRATOR)

PROSECUTOR: ADVOCATE KOCK

ATHLETE'S REPRESENTATIVE: NONE

UNION CYCLISTE INTERNATIONAL: MIKE BRADLEY

ANTI-DOPING VIOLATION : ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE ANTI-DOPING RULES.

1. **PROCEDURAL MATTERS**

The hearing commenced on the 24TH March 2015.

1.1. **JURISDICTION**

In terms of Section 10(1)(e) of the South African Institute for Drug-free Sport Act No. 14 of 2007. National Sports Federations must adopt and implement Anti-doping Policies and rules which conform with the World Anti-doping Code ("The Code") and with the requirements as set out in the SAIDS Anti-doping Rules.

SAIDS is a statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.

The Anti-doping rules, so adopted by SAIDS, are sports rules governing the conditions under which athletes participate in the sport of Cycling. Participants in said sport, like the Respondent, accept these Rules as a condition of participation and are bound by them.

1.2 **THE CHARGE**

The charge against the athlete was described as follows:

You are formally charged with an anti-doping rule violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).

On the 12th October 2014, you provided a urine sample (2958653) during an in-competition test. Upon analysis, the South African Doping Control Laboratory reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was Phentermine. Phentermine is categorised under **Class S6, Stimulants** on the World Anti-Doping Code 2014 Prohibited List International Standard.

1.3 **THE RIGHT TO HAVE THE B-SAMPLE TESTED**

The Athlete has the right to have the B-Sample tested and had exercised this right.

1.4 THE ATHLETE'S RESPONSE TO THE CHARGE

The athlete indicated that he understood the charge. He further confirmed that all the allegations and statements of facts insofar as it related to him and pleaded guilty to the offence. The athlete was unrepresented at the hearing however he had previously submitted a letter from Attorneys Weber Wentzel attached hereto marked 'H1 – H11'. The Attorneys indicated in their letter, that the athlete has no reason to question the validity of the testing process and subsequently Adverse Analytical Finding.

The athlete admits into evidence the following documents:

- 1.4.1. "A1" and "A2" – The letter dated 14th November 2014 from Fahmy Galant to Mr Austin Steyn.
- 1.4.2. "B" – The Doping Control Form for A-Sample
- 1.4.3. "C" – The Analytical Test Report Urine: A-Sample Analysis (Report nr 06111402)
- 1.4.4. "D1", "D2" and "D3" - emails dated 17th & 18th November 2014 between Mr Austin Steyn and Fahmy Galant.
- 1.4.5. "E" – Letter containing Adverse Analytical Finding : B-Sample 2958653
- 1.4.6. "F" - The Analytical Test Report Urine : B-Sample Analysis (Report nr 26111401)
- 1.4.7. "G" – The Doping Control Form for B-Sample
- 1.4.8. "H1" to "H11" - Letter from Webber Wentzel to Mr Nicholas Kock.
- 1.4.9. "I1" and "I2" – The affidavit of Lisa-Anne Steyn
- 1.4.10. "J" - Email dated 18th November 2014 from Praenisha Ramnath to Mr Steyn
- 1.4.11. "K1" to "K7" – Drug Free Sport Ruling for Mr. Andries Van Straaten.
- 1.2.12. "L1" and "L2" – Letter to Mr. Austin Steyn regarding the charge : anti-doping rule violation

The athlete admitted the correctness of these documents and confirmed that the documents were what they purported to be. He also admitted that the contents of the document were correct in all material respects, especially those documents which were pertinent to the collection and the analysis of the specimen sample from him on the day in question. The documents were accordingly accepted as evidence in the hearing.

The athlete gave an explanation for his plea of guilty by submitting an affidavit attached herewith marked annexure "M". He indicated that he was not a full time professional rider and needed to stick to a strict diet which was the most challenging aspect of his race build-up. On the 9th October 2014, he returned home from a business trip feeling

extremely fatigued and hungry due to his diet. He conveyed this to his wife who then recommended that he consume one of her diet products to suppress his appetite without eating.

The product provided by the athlete's wife is called Duromine. It is an anorectic agent used to manage obesity. He consumed the tablet and confirmed the tablet had no effect on him. He was unaware that the tablet contained any prohibited substances.

The athlete is not a professional cyclist and does not in the ordinary course consume dietary supplements. He submitted that this was a onetime occurrence and that he consumed the substance with no intention of enhancing his performance. He further stated that he did not consume the tablet to enhance his performance.

The athlete continued his preparation for the race where he placed 5th. After the race he was identified for testing. He stated he was happy to undergo the testing process.

The athlete was informed, via a telephone call from Mr William Newman, that the sample collected from him at the race returned an Adverse Analytical Finding.

The athlete was of the opinion that the above was a mistake so he immediately requested that his B-Sample be tested. The B-sample confirmed the result of the A-Sample. The athlete then stated that only after careful reflection and tracing of his steps did he recall consuming the tablet. He then added that it was only on further investigation into Duromine that he was able to confirm the Substance, found in his sample, was an ingredient in this tablet.

1.5. PROSECUTORS QUESTIONS AND SUBMISSIONS

The prosecutor advised the hearing, that the athlete in question was target tested as he had previously tested positive however there was problems with the Sample collection. WADA was accordingly informed of both the problems with the Sample collection and the intended target testing of the Athlete. The Athlete did not dispute this evidence.

The prosecutor also established the following from the athlete – that he failed to disclose in his doping control form (G), that he had consumed Duromine prior to the race.

1.6 THE LEGAL PROVISIONS APPLICABLE

ARTICLE 2.1 PRESENCE OF A PROHIBITED SUBSTANCE OR ITS METABOLITES OR MARKERS IN AN ATHLETE'S SAMPLE

- 2.1.1 . it is each athletes personal duty to ensure that no Prohibited Substances 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 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 Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two (-2) bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.
- 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 As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.

1.7. ANALYSIS OF THE EVIDENCE AND FINDINGS

It is each Athlete's personal duty to ensure that no Prohibited Substances enter his or her body. Athletes are responsible for any Prohibited Substances 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". There was prohibited substance found in the Athlete's body after he was tested. It is upon the athlete to take reasonable steps in ensuring that no banned substances enter his body, and it was not the case in this matter.

In analysing the evidence, the facts and the law, it is clear that the athlete has contravened the provisions of the anti-doping code and his admissions coupled with the documentary evidence constitutes sufficient proof of such contravention.

1.8. MITIGATING FACTORS

The Athlete was afforded an opportunity to address the panel on mitigating factors that it should consider when passing a sanction.

In mitigation he stated that he only participated in recreational sport when he commenced participating at a very late stage in life. He did this for health reasons i.e. to reduce he's weight.

He was against doping in sport and offered to be a voice that comes out strongly against doping in sport.

1.9. AGGRAVATED FACTORS

The Prosecutor stated that the athlete had been target tested and he had failed to disclose Duromine on his Doping Control Form.

1.10 SANCTIONS AND REASONS

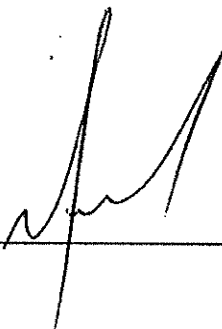
The athlete pleaded guilty. Article 10.4 and 10.5 that deal with "elimination or reduction of the period of ineligibility." Further the athlete admitted to consume the substance. However the panel accepted that the athlete had made a timely admission through his attorney's letter marked "H", in accordance with Article 10.10.2 which states: "Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by SAIDS, the period of Ineligibility may start as early as the date of Sample collection". The Athlete was given a period of two years of ineligibility to commence on the date of testing being 12th October 2014 to terminate on 11th October 2016.

South African Institute for Drug-Free Sport (SAIDS)

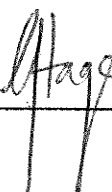
Disciplinary Panel

DATED AT DURBAN ON THIS 21ST APRIL 2015

SIVEN SAMUEL (CHAIR)



GLEN HAGEMANN



RISHI HANSRAJ