

**BETWEEN                      DRUG FREE SPORT NEW ZEALAND**

**Applicant**

**AND                             DANIEL RYAN**

**Respondent**

**AND                             BASKETBALL NEW ZEALAND INC.**

**Interested Party**

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**DECISION ON APPLICATION**

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Representatives:    Paul David (Counsel), Graeme Steel and Jayne Kernohan for Drug Free Sport New Zealand  
                                 Courtney Anderson (Counsel) for Daniel Ryan  
                                 Tim Hamilton and Stephen Layburn for Basketball New Zealand

The Tribunal:        Barry Paterson QC, Chairman  
                                 Ron Cheatley  
                                 Chantal Brunner

Registrar:            Brent Ellis

## **INTRODUCTION**

1. This is an application by Drug Free Sport under the provisions of r 3.1 of the Sports Anti-Doping Rules 2011 (the Rules) alleging that Mr Ryan had in his body a prohibited substance or its metabolites or markers while competing.
2. Mr Ryan gave a urine test after the Waikato Pistons played the Hawkes on 15 July 2011 in the Basketball League Semi-Final at the TSB Arena, Wellington. The 'A' sample returned an adverse analytical finding for the prohibited substances D-Amphetamine and D-Methamphetamine.
3. On an application from the Interested Party (Basketball NZ), this Tribunal, on 18 August 2011, provisionally suspended Mr Ryan under r 12 of the Rules.
4. Mr Ryan requested that his 'B' sample be tested but this also returned a positive test for the two prohibited substances.

## **Mr Ryan's Position**

5. Mr Ryan filed a Notice of Defence in which he took alternative positions. The first was his wish to defend the application and the second was that if his defence did not succeed, he would admit the violation but wished to participate in the proceeding by making submissions on any sanction or penalty which might be imposed.
6. The Notice of Defence indicated that the defence would be that the substances were taken "out of competition" as Mr Ryan had before taking the substances believed that his season was over. The alternative defence was to be based on the fact that the substances had not been taken for performance enhancing purposes.
7. The matter was timetabled for a hearing and Mr Ryan filed a brief of evidence. In this he confirmed that he thought he had played

his last game for the season as he believed he was not required by the Waikato Pistons for their final matches. On the nights of 9 and 13 July 2011 he went out drinking and on one of those two nights, he does not remember which, he was given a pill which he thought was a legal party pill bought from a dairy. He says he would not have taken the pill if he had known what it actually was. The pill was taken in an attempt to relax and relieve some of the stress that he was feeling. His evidence that he was called in at the last minute to play in the semi final was confirmed by the team's coach.

8. On 7 October 2011, during a telephone conference, Mr Ryan's legal counsel indicated that Mr Ryan would now accept the violation infringement and did not wish to challenge the sanction provided by the Rules (a two-year suspension). Mr Ryan was given a week to reflect on his position and asked to confirm in writing by the end of that week whether the position was as stated by his counsel during the conference.
9. On 14 October 2011, Mr Ryan's counsel filed a written memorandum confirming that Mr Ryan had reflected and considered his position and now wished to withdraw his defence. He accepted the consequences of his actions and understood that a suspension order would now be issued by the Tribunal. He did not require a formal hearing and one has not been held. He accepted that the Tribunal was not able to comment on, or accept the circumstances surrounding the offence, but asked that his position be noted in the decision.
10. In accordance with Mr Ryan's request, his position has been noted. The Tribunal notes, however, that the evidence has not been tested by cross-examination as it would have been if the matter had proceeded to a hearing. The circumstances, whatever they may be, are not relevant to the decision which the Tribunal is required to give under the Rules.

## **Discussion**

11. Although the out of competition defence was withdrawn, it is appropriate to comment on it. The Rules are based on the WADA Code and the note to r 3.2.2 of the Rules also appears in the WADA Code. It states that the presence of a prohibited substance in a sample collected in competition is a violation of r 3.1, regardless of when that substance might have been administered. The defence could not have succeeded. The infringement is that Mr Ryan competed with the prohibited substances in his body.
12. Nor would Mr Ryan have been entitled to a reduction of the suspension on the grounds that he did not take the substances in order to enhance his performance. Whatever the circumstances may have been in relation to the taking of the substances, and the Tribunal notes that the coach of the Waikato Pistons has confirmed that it was not expected that Mr Ryan would be playing in the match in which he was tested, the two substances involved in this case are not Specified Substances under the Prohibited List issued by WADA. The provisions of r 14.4 of the Rules, which is the only rule which would entitle Mr Ryan to a reduction of the sanction on this ground, only applies to Specified Substances. Mr Ryan could not have availed himself of the provisions of that rule.
13. Rule 14.2 of the Rules provides for a period of ineligibility of two years for the first offence on the presence of Prohibited Substances in an athlete's body during competition. In the circumstances, the mandatory sanction is a two year suspension.
14. Under r 14.10 of the Rules, the period of suspension applies to participation in any capacity in a competition or activity authorised or organised by Basketball NZ or any of its member organisations or clubs. Similar provisions apply to competing or participating in activities of any other national sporting

organisation which is a signatory to the WADA Code. The sanction has cross-sport effect.

**Decision**

15. In accordance with r 14.2 of the Rules, the sanction imposed on Mr Ryan is a period of two years' ineligibility from 18 August 2011, being the date of the provisional suspension order.

Dated 31 October 2011

A handwritten signature in blue ink, appearing to read 'B J Paterson', is positioned above a dotted line.

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**B J Paterson QC**  
**Chairman**