

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

 Applicant

AND **SIMEON WOOLSEY**

 Respondent

AND **MOTORSPORT NEW ZEALAND**

 Interested Party

**DECISION OF SPORTS TRIBUNAL
DATED 12 JUNE 2020**

Decision At the request of the parties the decision was made on the papers

Tribunal Sir Bruce Robertson (Chairman)
 Paula Tesoriero
 Rob Hart

Participants Harriet Bush, counsel for Applicant
 Hayden Tapper, Drug Free Sport New Zealand
 Simeon Woolsey, the Respondent
 Charlotte Le Grice, counsel for Respondent

Registrar Mike Selwyn

Background

1. Simeon Woolsey is a member of MotorSport New Zealand (MSNZ), which has agreed to the 2020 Sports Anti-Doping Rules (SADR 2020).
2. Drug Free Sport New Zealand (DFSNZ) alleged that Mr Woolsey breached the SADR 2020 by:
 - (i) Some time in early 2020 and prior to 11 February 2020 purchasing 50 tablets labelled to contain 10mg of Tamoxifen in breach of R2.6 of the SADR 2020, and using it or attempting to use it at various times thereafter in breach of R2.2 of the SADR 2020; and
 - (ii) Some time in early 2020 and prior to 11 February 2020 purchasing 30 tablets labelled to contain 25mg of Clomiphene in breach of R2.6 of the SADR 2020, and using it or attempting to use it at various times thereafter in breach of R2.2. of the SADR 2020.

Proceedings

3. On 29 April 2020, Drug Free Sport New Zealand (DFSNZ) filed an Application for the Provisional Suspension of Mr Woolsey. On 4 May 2020, a telephone conference was convened by the Tribunal Chairman and Mr Woolsey advised that he did not oppose the application. A provisional suspension was issued that day.
4. On 29 May 2020, Mr Woolsey filed his defence, where he admitted the violation but expressed the desire to participate in the proceeding by making submissions on any sanction to be imposed. That same day, he filed a written submission.
5. In his submission, Mr Woolsey admitted to ordering Tamoxifen and Clomiphene from an online pharmacy, but he stressed that he did not do it for the purpose of enhancing his performance or obtaining any advantage in his sport. He stated that he was not a professional athlete and was unaware (and had not been made aware) that recreational athletes were bound by the SADR 2020.
6. Mr Woolsey stated that he never received nor did he use the prohibited substances.
7. On 8 June 2020, the parties filed a joint memorandum as to sanction that suggested that a period of two years of ineligibility was appropriate, backdated by three months

from the date of the provisional suspension having regard to Mr Woolsey's timely admission of the violation. A copy of that memorandum is annexed.

8. Under SADR 10.2 the sanction is a two year period of ineligibility for a first violation where the violation involves a Specified Substance and DFSNZ is unable to establish intent.
9. The Tribunal having considered all the available material is satisfied it is able to accept the proposal and make orders accordingly. The prohibited substances were not ordered to enhance performance but to self-treat an unspecified medical condition.

Order

10. Mr Woolsey's suspension will be for a period of two years backdated to commence from 4 February 2020 (three months prior to the provisional suspension). This means that Mr Woolsey is ineligible to participate in competitive sport until 4 February 2022.

Dated: 12 June 2020



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Sir Bruce Robertson
Chairman

ST02/20
Sport Tribunal of New Zealand

between
DRUG FREE SPORT NEW ZEALAND
Applicant
and
SIMEON WOOLSEY
Respondent

JOINT MEMORANDUM OF COUNSEL ON SANCTION

8 June 2020

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JOINT MEMORANDUM OF COUNSEL ON SANCTION

Introduction

1. This memorandum is filed jointly by counsel for DFSNZ and counsel for Mr Woolsey in relation to the appropriate sanction for breach of r 2.2 and 2.6 of the Sports Anti-Doping Rules 2020 (**SADR**).
2. For the reasons set out below, the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose a period of ineligibility of two years on Mr Woolsey for breach of rr 2.2 and 2.6 of the SADRs, backdated by three months from the date of provisional suspension due to timely admission.

Background

3. Mr Woolsey is a member of Motor Sport New Zealand, which has adopted the SADRs. He participated in rounds 3 and 4 of the Honda Cup Series in February 2020.
4. On 11 February 2020, New Zealand Customs Service referred a parcel addressed to Simeon Woolsey to Medsafe. The parcel contained scheduled prescription medicines under the Medicines Regulations 1996, including 50 tablets labelled to contain tamoxifen 10mg, and 30 tablets labelled to contain clomiphene 25mg. Under the WADA Prohibited List 2020, Tamoxifen and Clomiphene are prohibited substances both in and out of competition under s 4 – hormone and metabolic modulators.
5. On 12 February 2020 Medsafe advised Mr Woolsey that it had his parcel. A Medsafe employee spoke to Mr Woolsey on 17 February 2020. Mr Woolsey stated that he had ordered the medicines approximately two weeks prior due to personal health issues.
6. Medsafe then referred the matter to DFSNZ. As a result, DFSNZ filed the current anti-doping rule violation proceeding on 29 April 2020. Mr Woolsey was provisionally suspended on 4 May 2020.
7. Mr Woolsey's form 2, admitting the violations, and his statement in relation to sanction were filed on Friday 29 May 2020.

Period of ineligibility

8. Under r 10.2.1 and 10.2.2, the period of ineligibility for breach of r 2.2 and 2.6 involving a specified substance is two years, unless DFSNZ can establish that the violation was intentional. Rule 10.2.3 provides that the term "intention" requires the athlete to engage in conduct that they knew constituted an anti-doping rule violation, or knew that there was a significant risk that the conduct might constitute or result in a violation, and manifestly disregarded the risk.
9. Mr Woolsey's evidence is that:

- (a) His involvement in motorsport is a part-time hobby, however, he does not plan to continue with once his period of ineligibility has finished;
 - (b) He was not aware that, as a member of MSNZ, he was subject to the SADR's;
 - (c) He has not received any anti-doping rule violation education, participated in any driver training programmes, or applied to participate in the MSNZ driving academy; and
 - (d) He ordered the products due to a personal health issue after searching for the products online and determining they could be used to assist him. He assumed he would be able to bring them into the country without any issue as he could purchase them without a prescription.
10. Based on Mr Woolsey's evidence, and the approach taken to intention in previous Tribunal decisions, the parties consider there is evidence from which the Tribunal could be satisfied that the violations were not intentional and a period of ineligibility of two years is appropriate.

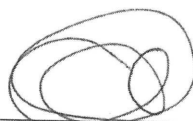
Backdating

11. Rule 10.11.2 allows the period of ineligibility to be backdated based on timely admission where the athlete promptly admits the violation after being confronted by DFSNZ. Mr Woolsey admitted purchasing the substances after receiving DFSNZ's notification of intention to bring ADRV and signalled during the provisional suspension application that the violation would not be disputed. The parties agree that the Tribunal could properly find that this amounted to a timely admission.
12. If the Tribunal considers the agreed position is appropriate, the parties respectfully submit that the matter can be dealt with on the papers. Counsel are available to attend a teleconference should the Tribunal wish to hear from Counsel on sanction.

Dated 8 June 2020



Harriet Bush / *Kaitlin Calder*
Counsel for DFSNZ



Charlotte Le Grice
Counsel for Mr Woolsey