

BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 09/07

**BETWEEN THE NEW ZEALAND FEDERATION
OF BODY BUILDERS INC**

Applicant

A N D MIKE PEARSON

Respondent

Date of Hearing: 28 August 2007 (by teleconference)

Decision of Tribunal: 30 August 2007

Appearances: Mark Stewart for Applicant
No appearance by Respondent

Tribunal Members participating: Nicholas Davidson QC (Deputy Chairperson)
Carol Quirk
Tim Castle

Registrar: Brent Ellis

Introduction

1. Mike Pearson (“the Athlete”) is a participant in body building, who refused to supply a sample at the Auckland Body Building Championships, on 30 June 2007.
2. Drug Free Sport New Zealand (“DFS”) made a Notice of Determination, with entry on the Sports Drug Register, that the Athlete did not have reasonable cause to fail to comply with a request to provide a sample, with reference to sections 14(3) and 18(1) of the New Zealand Sports Drug Agency Act 1994.
3. The New Zealand Federation of Body Builders (“NZFBB”) made an application to this Tribunal as an Anti-Doping Rule Violation proceeding, based on the DFS determination, and did not seek provisional suspension.
4. The Applicant referred to the membership and registration form, and regional entry form completed by the Athlete, in respect of the Championships.
5. The Applicant also referred to its Anti-Doping Policy dated 1 September 2004, incorporating certain Articles of the World Anti-Doping Code (“WADA Code”) applicable to the Policy.

Athlete’s Response

6. The Athlete filed a Notice of Defence with the Tribunal dated 6 August 2007, admitting the Anti-Doping Rule Violation and advising that he did not wish to participate in the hearing. He recorded his understanding that the Tribunal might impose a penalty on him without holding a hearing.

WADA Code and the Anti-Doping Policy of the NZFBB.

7. The applicable anti-doping policy provides that it shall give effect to the core aspects of the WADA Code and comply with the New Zealand Sports Drug Agency Act 1994 and the International Federation of Body Builder’s (“IFBB”) Anti-Doping Rules.

8. The policy expressly incorporates certain Articles of the WADA Code, and the Code itself is a Schedule to the Policy. The Policy applies to all athletes within the jurisdiction of the NZFBB and its member organisations.
9. By Rule 7.1, all persons to whom the Policy applies may be subject to investigation and sanction under the Policy if they commit any one or more of the Anti-Doping Rule Violations as set out in Article 2 of the WADA Code.
10. Sanctions are imposed under Article 10 of the WADA Code. Other consequences flow under Article 10.2 and 10.3. The period of ineligibility for violations of Article 2.3, refusing to submit to sample collection, is 2 years.
11. The WADA Code sets out the basis on which there may be an elimination or reduction of the period of ineligibility. While the Athlete has not advanced any basis upon which such can be given consideration, it is difficult to identify the circumstances which could support such a contention. Although in principle under Article 10.5.2 an athlete may seek to establish that he or she bears no significant fault or negligence, once the determination has been made that there has been a refusal, which is not defensible in law, the Tribunal identifies difficulty for the athlete in seeking a reduction in the period of ineligibility for this type of breach.

Hearing

12. At the hearing on 28 August 2007 the Athlete, consistent with his written response, took no part. Mr Stewart for NZFBB advised the Tribunal that the Athlete had competed, since he admitted the violation, taking the view that as there had been no provisional suspension imposed, and no decision of this Tribunal, he was free to do so. That may be correct, applying the letter of the law. NZFBB chose not to make an application for provisional suspension, which following the admission would have been well open to it, and under its Rules. Under Rule 9.3 NZFBB may impose a provisional suspension on any athlete who has received an Infraction Notice, and falls under investigation by the DFS for an alleged

Anti-Doping Rule Violation. Prior to the imposition of a provisional suspension, that person must have an opportunity to put a case at a provisional hearing. There was no such application here.

Decision and Sanction

13. The Athlete committed an anti-doping infraction by refusing to provide a sample when requested. As the Tribunal understands this is his first violation, he is ineligible to participate in his sport and all other sports which are signatories to the WADA Code, for a period of two years commencing from the date of this Decision.

Dated at Christchurch this 30th day of August 2007



Nicholas Davidson QC

Deputy Chairperson

(for the Tribunal)

Timothy Castle

Carol Quirk