

**BEFORE THE SPORTS DISPUTES TRIBUNAL
OF NEW ZEALAND
SDT/10/04**

Anti-doping violation application

BETWEEN **NEW ZEALAND FEDERATION OF BODYBUILDERS**
Applicant

AND **ANNETTE SLOOG**
Respondent

Tribunal: Tim Castle (Presiding Member)
Adrienne Greenwood
Ron Cheatley

Representation: Tom Terry, Vice President and Legal Counsel for N.Z Federation
of Bodybuilders

 The respondent in person

Decision: 13 December 2004

DECISION OF TRIBUNAL

Introduction and background

1. The Tribunal received an application dated 26 August 2004 by New Zealand Federation of Bodybuilders (NZFBB), alleging that the respondent had committed an anti-doping violation and seeking the imposition of a penalty pursuant to the Rules of the Tribunal and the Constitution and applicable Rules of the NZFBB. The application followed the receipt by NZFBB of a formal notice from the New Zealand Sports Drug Agency advising that the respondent, Annette Sloog, tested positive for the presence of Furosemide competing at the 2004 North Island Body Building Championships on 10 July 2004.
2. The Tribunal's jurisdiction to consider the NZFBB application is established on the basis of a written agreement between the applicant and respondent (and signed by both) dated 26 August 2004 to submit the matter to the Tribunal for determination.
3. The written determination of the Board of the New Zealand Sports Drug Agency ("NZSDA") is dated 13 August 2004 and, in accordance with the provisions of the NZ Sports Drug Agency Act 1994, was formally communicated to the respondent shortly thereafter. An obviously inadvertent error in the letter of the NZSDA to the

respondent, namely the statement therein asserting that the sample had been supplied by Ms Sloog on 31 January 2004 was subsequently corrected. The date 10 July 2004 in the NZSDA determination was substituted for the January date, by consent, during the teleconference the Tribunal held with the parties in the early evening of 20 October 2004.

4. In accordance with the Tribunal's Rules, Ms Sloog filed a notice of defence together with accompanying (copy) letters earlier sent by her to the NZFBB in which she explained the circumstances leading to the positive test. Ms Sloog explained that she was *"totally unaware what drugs are not allowable when competing"*, and that she used the drug in question *"to help alleviate a problem with fluid retention"*. Ms Sloog also admitted that she had used Furosemide at different times over the last few years for such purposes.
5. In fairness to Ms Sloog, we formally record the papers she has filed for our consideration. In addition to her Notice of Defence dated 19 September 2004, three written statements were received by the Tribunal from Ms Sloog. Two are dated 3 August 2004; the third is undated but is a series of statements added to the pages, copied, of her statement of defence filed earlier. In these papers the respondent confirms:
 - 5.1 There is *"no need for urgency on my part as I have no intention of competing at the Nationals and have not been training towards any events following my positive testing"*.
 - 5.2 In *"... no way shape or form have I knowingly taken any supplement or 'drug' that would enhance my physical sporting development or progression in my chosen sport"*.
 - 5.3 That she has been *"... competing on a regional level in the sport of bodybuilding for the last three years and enjoyed moderate successes. ... And was aware that the IFBB Federation advocated drug testing of its competitors ... and is in full agreement with this procedure in an endeavour to 'clean up' the sport especially if you wish to take bodybuilding as a sport onto an even playing field for all of those involved"*.
 - 5.4 She *"... was and still is totally unaware what drugs are not allowed or when competing and was rather ignorantly not overly concerned as I believed in all honesty that I had never taken any banned substances"*.

- 5.5 That she had used Furosemide which she knows as Fursamine intermittently “... to help alleviate a problem of fluid retention which can cause considerable discomfort particularly in wrists, hands, ankles and feet ...” but until she received the information from the NZSDA she had no idea that the substance was banned.
- 5.6 That “*in all honesty*” she contends that she “*did not take the drug nor does she need to in order to enhance her chances of placing at the North Island Bodybuilding Show*”. The respondent stated that immediately prior to the championships, she shifted home and with the usual herbal water depletion tablets she takes prior to competition being amongst the (no doubt large number of) boxes used for the shift, was unable to locate her natural water balance capsules. Without thinking (she told us) that there could possibly be any consequences she took the Furosemide on a couple of occasions. She took the drug solely for its diuretic properties and in no way to mask any other substances. She strongly asserts complete innocence in this regard. The problem for the respondent is that the substance she took is on the banned list. She overlooked declaring the drug on the night of testing. That, she says, “... was solely an oversight ...”. Her infraction she says was “*totally unpremeditated*” and she has been strongly critical of herself for taking the diuretic.
- 5.7 The infraction has devastated the respondent as she told the Tribunal in her written material. She still finds it hard to believe that she did not check prior to competing if there was any way she would have been likely to test positive for a banned substance. Understandably the respondent seeks to have her case distinguished from what might be described as other doping cases in that her mistake was to take a diuretic for reasons that she advances, not for any sinister reason. To that extent she contends she is not strictly a drug cheat at all. The Tribunal agrees that her case can be fairly distinguished in this way.
- 5.8 She made a last minute decision to compete under NZFBB rather than the NABBA Federation under the auspices of which she has previously participated in this sport. The decision to compete under the rules of the New Zealand Federation of Bodybuilding came about only because of a principled decision by the respondent that she felt that the ethical protocols of the applicant Federation were more in line with her own views particularly in relation to appropriate female bodybuilding physique.

6. Ms Sloog confirmed these matters during the teleconference 20 October 2004. She apologised in the hearing and “presence” of the Tribunal members to the representative of the applicant Federation. In her earlier written material, Ms Sloog had also recorded a heartfelt apology for putting the sport’s governing body into the position it found itself in because of her actions. Her written explanations to both the sport’s governing body and to the Drug Agency as well as the Tribunal have a compelling ring to them.

The applicant’s position

7. At the teleconference 20 October 2004, the representative of the sport, Mr Tom Terry, its Vice President and legal counsel expressed sympathy on behalf of the sport for the position in which Ms Sloog finds herself. He accepted that there may be valid reasons why she used the diuretic. He accepts the distinction between the taking of a diuretic in this case on the one hand and other cases of deliberate doping on the other. Nevertheless, not surprisingly, the Federation considers a strong message must be given to athletes to take full responsibility for whatever is in their bodies. We agree.
8. The NZFBB sought from this Tribunal the following penalties:
 - (i) Two year suspension from 10 July 2004 to 10 July 2006;
 - (ii) Return of medals or trophies (placings);
 - (iii) Publication of name in the New Zealand Federation of Bodybuilding newsletter;
 - (iv) Ineligibility to officiate in or at any NZFBB IFBB events while under suspension.

Respondent’s reply

9. For her part, Ms Sloog felt that such outcomes were unjust to a point in that:
 - (i) *“They would be a maximum suspension for a first and only offence involving a fluid tablet for solely such purpose – not as masking agent”;*
 - (ii) She *“would never compete again after a two year suspension”;*
 - (iii) If publication of her name was considered appropriate, Ms Sloog requested that the publication identify that her offence was *“... in respect*

of a diuretic rather than a performance-enhancing drug so that speculation within the sport could be more accurately answered”.

Consideration of sanctions – WADA protocols

10. In the WADA 2004 Prohibited List (International Standard) Second Edition, effective 26 March 2004, s.8 masking agents are prohibited. The banning of masking agents is, un-surprisingly, premised on the fact that such products have the capability to manipulate the excretion of prohibited substances, by, for instance, concealing their presence in urine.
11. Masking agents include, but are not limited to diuretics, epilestosterone, probenecid and plasma expanders. Diuretics, listed in the WADA Code, include, among others, Furosemide for which the respondent tested positive.
12. Diuretics are primarily designed to hasten the excretion of fluid from the body. They can increase fluid production and excretion. The rationale to their banning includes the fact that their masking capacity enables dilution or “watering down” of other substances in the urine with the potential that such other substances, including any banned substances, will be diluted to such an extent that testing of the urine matrix will not detect their presence.
13. All diuretics are prescription drugs. In this case the respondent confirmed to the panel during a pre-hearing (telephone) conference on 20 October 2004 that Furosemide was obtained by her by prescription from her medical practitioner. Seldom, indeed probably never, would a diuretic be required by an athlete in an emergency situation; and no emergency situation requiring her to take Furosemide was here asserted by the respondent. However the WADA protocols recognise that some athletes, like all other persons, may suffer illnesses or medical conditions that require them to take particular medications; and if the substance so required is included in the prohibited list a therapeutic use exemption (TUE) may provide the athlete with the authorisation to take the required medication.
14. Adapting the published WADA information and protocols – available on the WADA website [www.wada-ama.org] - the criteria for granting a TUE referable to the instant case are:
 - The athlete would experience significant health problems without taking the prohibited substance (in this case the diuretic Furosemide);

- The therapeutic use of Furosemide would not produce significant enhancement of performance;
 - There is no reasonable therapeutic alternative to the use of the diuretic.
15. It is known that diuretics can be sometimes prescribed to ease the suffering of, and from, hypertension. The respondent was able to satisfy the Tribunal that in some respects she was, at times relevant to the positive test for Furosemide, suffering from elevated tension, stress and anxiety arising from a number of personal circumstances not totally related to the event in which she was competing. In this case however the respondent did not have, and cannot rely upon a TUE which might have otherwise been available. But it is important to note that the provisions of the WADA code are not silent on this point.
16. In order to secure a TUE, international sporting federations and national doping organisations, must provide a process for athletes with documented (prior) medical conditions, to apply for a TUE. Such application must, pursuant to the established procedures, be considered by a panel of independent physicians called a Therapeutic Use Exemption Committee. It is the international federations and national anti-doping organisations, through their TUEC's, which are responsible accordingly, for granting or declining such applications. WADA does not process the applications; they are not made to it.
17. Two further matters deserve mention in relation to the WADA code.
- 17.1 The Tribunal understands that next year, 2005, WADA will undertake a further review of the sections of its Code dealing with prohibited substances, materials and masking agents. Some presently banned may be removed; and others added. Pending such a review, it is to be presumed that diuretics presently listed will remain so.
- 17.2 Under the WADA Code, provision is made for a reduction or elimination of suspension periods upon violation in the event an athlete can establish that he or she bears no fault or negligence for the violation. This is only available where the doping offence involves either:
- the presence of prohibited substances or its metabolites or maskers (Article 2.1);
 - use of a prohibited substance or prohibited method under Article 2.2;

- failing to submit to sample collection under Article 2.3;
- administration of a prohibited substance or prohibited method under Article 2.8.

The offence which Ms Sloog has admitted does not fall into these categories of offending; and in any event it is the Tribunal's finding in this case that she was at fault for not establishing for herself that diuretics, including Furosemide, are banned as masking agents. So Ms Sloog would not have been able to rely on the provisions for elimination or reduction of the period of suspension even if they applied to that part of the WADA Code which deals with masking agents.

17.3 The Tribunal understands that next year, 2005, WADA intends reviewing the current restricted list of its Articles to which the suspension elimination/reduction provisions apply. It may be that the "no fault or negligence" provision will extend beyond its present confines; and it may extend to the masking agents provisions. Only time will tell. In the meantime, the Tribunal will deal, as it must, with Ms Sloog's case under the NZFBB and WADA provisions presently in force.

Applicable Anti-Doping Code

18. In the course of its deliberations on this matter the Tribunal requested from NZFBB a copy of its Anti-Doping Code, applicable at the time of the respondent's testing and the NZSDA determination in respect of it. Up until the time of the request the NZFBB had helpfully included in its papers submitted to the Tribunal a copy of its "NZFBB Anti-Doping Appeals Procedures", but had not submitted a copy of its applicable Drug Testing Policy or Anti-Doping Code.
19. Despite request a copy of the applicable Anti-Doping Code has not been forthcoming directly from NZFBB but the Tribunal has had, independently, access to such document. A SPARC model Anti-Doping Policy was sent out to NZFBB and other national sporting organisations on 16 August 2004, and it is anticipated that NZFBB may well have adopted that Policy as at the date of this decision (or will shortly do so). As at 10 July 2004 when the respondent was tested, however, the NZFBB code in force was its then current "NZFBB Drug Testing Policy". Under this Policy:

- Doping means the presence in any competitor of any substance included in the current list of banned substances of the International Federation of Bodybuilders (“IFBB”), the International Olympic Committee and any other international organisations as appropriate;
 - For the purposes of the policy, a doping offence shall occur when an individual is found to be positive for the presence of a prohibited substance;
 - The policy applies to all competitors whether New Zealanders or otherwise or in or out of competition or overseas;
 - The NZFBB authorises the NZSDA or its authorised agent to conduct doping control;
 - Applicable procedures follow either the NZSDA procedures or those of the IFBB whichever shall apply;
 - Whilst a broad discretion is available to a NZFBB appointed Disciplinary Tribunal to determine the penalty for a doping offence, including suspension, the penalty must be in accordance with the IFBB Drug Policy. That policy is deemed to be part of the NZFBB policy.
20. Accordingly the Tribunal has accessed the Doping Control Policy and Anti-Doping Programme of the IFBB. That document is a published document and available on the website of the IFBB. Under Article 36 an athlete found guilty of having committed a doping offence must submit to a 2-4 year suspension where it is a first offence involving diuretics; and for the duration of the suspension remains ineligible to compete in any IFBB sanctioned or IOC recognised international event or any event sanctioned by any national federation; automatically suffers a withdrawal of any awards, medals, certificates and placing won on or after the date of the doping offence; and is ineligible for any position with the IFBB as an administrator or other official.

The consideration by the Tribunal

21. There is no doubt that Ms Slogg is guilty of a doping offence within the terms of the Code. The NZBB Anti-Doping Policy outlines clear policy in respect of this level of violation by specific reference to the Code of the IFBB.
22. In our view it is imperative that sports bodies take – and can show they have taken – all available steps to inform their athletes of the detail of the prohibited

substances and methods in sport. In the Tribunal's opinion, it is very unfortunate that Ms Sloog was unaware of what substances were illegal and were on the banned list. Whilst the Tribunal understands that explanation, however, it can only be an explanation and not an excuse. It is, in the end, up to each and every athlete to make themselves very aware of what substances are on the banned list and not to transgress in any way.

23. To her credit Ms Sloog told the Tribunal she accepted the positive test result and said she would not dispute it, as she takes the responsibility on herself. Ms Sloog has expressed her regret at the positive test and claims she took Furosemide solely for its diuretic properties and in no way to mask any other substances. Ms Sloog told the Tribunal she would not be competing pending our decision, in any bodybuilding event.
24. After hearing from the parties, and there being no objection, the Tribunal elects under Rule 11.8.2 of the Tribunal's Rules to determine the proceedings by reference only to the papers filed and the oral submissions made during the pre-hearing telephone conference held on 20 October 2004.
25. The Tribunal finds Annette Sloog of 5/6 Wood St, Papakura, guilty of a doping offence under Clause 1.1.1 of the NZFBB Drug Testing Policy in relation to the presence of the diuretic Furosemide in a sample provided in competition on 10 July 2004.
26. In the exercise of our discretion under the IFBB Code we have determined for the reasons given, particularly in paragraph 22 hereof, that the appropriate period of suspension for the respondent is the minimum 2-year suspension from the sport effective from 10 July 2004 to 9 July 2006. She is suspended accordingly.
27. In addition, any medals or trophies collected by Ms Sloog during the competition on 10 July 2004 shall be returned immediately to NZFBB.
28. The Respondent is prohibited from competing or officiating at any NZFBB or IFBB events during the period of the suspension.

SIGNED for and on behalf of the Tribunal:

.....
T J Castle
Presiding Member