

INTRODUCTION

1. Mr Tomuli, a body builder, competed at the Central North Island Body Building Championships at Hamilton on 22 October 2005 and in the New Zealand Body Building Championships in Auckland on 30 October 2005. After both events, he was tested by Drug Free Sport and on each occasion, returned a positive test for the drug nandrolone which is a Class S1 anabolic agent under the 2005 Prohibited List issued by the World Anti-Doping Agency ("WADA").
2. Drug Free Sport issued two determinations dated 25 November 2005 and 12 December 2005, respectively. Mr Tomuli knew of the first positive test around about 7 November 2005.
3. A procedural hearing on 21 April 2006 was with the agreement of both Mr Tomuli, his counsel Mr Mansfield, and Mr Stewart on behalf of the applicant converted into a hearing to consider the consequences of Mr Tomuli's violations. Prior to the hearing, Mr Mansfield had submitted a memorandum which was signed by Mr Tomuli. In that memorandum, Mr Tomuli accepted the jurisdiction of this Tribunal and admitted the doping offences. He accepted that the consequence would be a two-year period of ineligibility but requested that the period commence from his last competition, namely 30 October 2005. The only other issue for determination was whether the sanction to be imposed on Mr Tomuli was to be for a first violation (two years' ineligibility) or a second violation (lifetime ineligibility).
4. Mr Tomuli affirmed to the Tribunal the truth of the statements which he made in the memorandum presented by Mr Mansfield but signed also by Mr Tomuli. He answered questions from Mr Stewart and from members of the Tribunal.

BACKGROUND

5. Mr Tomuli has competed in a number of competitions, both nationally and internationally, and has many significant results. Mr Stewart accepted the statements in the memorandum, which included that Mr Tomuli is well-known for encouraging and assisting novice and more junior members of the sport and that he has been a positive role model outside the sport.
6. Mr Tomuli was tested once previously in 2004 and the tests resulted in a negative finding. As a result of the National Championships on 30 October 2005, and his

results in them, he would have been entitled to his Pro Card. It had been his intention to then compete professionally.

7. Mr Tomuli's explanation of how the nandrolone came into his system was that prior to the national competitions he was provided with a sample dietary product by another competitor from within the sport who purported to be supportive of his career. Mr Tomuli had no idea that the product contained the drug nandrolone. Prior to this he had been careful to ensure that his diet contained no prohibited drugs. He was aware that if he succeeded in the two competitions in October 2005, he would be tested for drugs. However, he had confidence in the party providing the dietary product as that party had indicated possible significant financial sponsorship. Mr Tomuli has named the name of the athlete who gave him the dietary product to Drug Free Sport and also the name of another athlete who, he believes, may have been responsible for the drug being given to him. He now believes that the drug may have been deliberately provided to him so that he would commit a doping offence and that there was a motive behind him being supplied with the drug.
8. In the circumstances, Mr Tomuli did not seek to establish the defences of "No Fault or Negligence" or "No Significant Fault or Negligence". In the circumstances, the Tribunal is of the view that Mr Tomuli was correct in not endeavouring to establish these defences. He has expressed genuine remorse for his error of judgment.
9. The applicant is putting together an education programme in respect of drugs and Mr Stewart asked Mr Tomuli whether he was prepared to be part of that programme and help in educating other athletes. Mr Tomuli agreed to be part of the programme and to cooperate in it both by referring to his experiences and encouraging other athletes to be drug free.

NUMBER OF VIOLATIONS

10. Mr Tomuli's evidence, which the Tribunal has no reason to doubt, was that he took the dietary product once only before the first event.
11. In this case, Mr Tomuli tested positive for the same drug in two events 8 days apart. He had not been advised of the positive test when he competed for the second time. In the circumstances, Article 10.6.1 of the WADA Code applies. It states, in effect, that before the Tribunal can consider that there were two violations in this matter, it has to be established that the second violation occurred after the athlete received

notice of the first violation. In this case, that clearly did not happen and as a consequence, even though there were two separate tests at two different events, it is necessary to treat both the positive tests as being the first violation. Accordingly, the appropriate sanction is a two-year period of ineligibility.

THE STARTING DATE

12. Under Article 10.8 of the WADA Code, the period of ineligibility normally starts on the date of the hearing. However, any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served. Further “where required by fairness, such as delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of “*Sample* collection”.
13. This Tribunal has in the past commenced the period of suspension prior to the date of hearing. It is of the view that there are reasons for doing so in this case. The first of these is that as from the date he received details of the first positive test, Mr Tomuli believed from that date he could not compete. Although he did not formally advise the applicant that he was not competing, the reality was that he considered himself unable to compete and did not do so. Further, Mr Tomuli did not compete in any similar events run by any other organisation.
14. There are two other aspects which are relevant to the issue of the commencement date of the suspension. The first is that there has been some delay in processing this matter, all of which was not the responsibility of Mr Tomuli. He is entitled to some credit for that. Secondly, Mr Tomuli’s attitude of cooperating with Drug Free Sport and other authorities in respect of the violations and the reasons for them is to be commended, as is his decision to participate in the applicant’s education programme. After the hearing, Mr Stewart raised concern at a report that Mr Tomuli may have gone to Australia. However, Mr Mansfield has confirmed that Mr Tomuli remains committed to assist the applicant’s education programme.
15. For these reasons, the Tribunal is of the view it does have power to commence the period of suspension from the date on which Mr Tomuli last competed. Mr Stewart, for the applicant, indicated that he had no objection to this course being adopted by the Tribunal. In the circumstances, the period of *Ineligibility* will commence from 31 October 2005.

DECISION

16. Mr Tomuli, having admitted the doping violations, is ineligible in accordance with Article 10.2 of the WADA Code for a period of two years from 31 October 2005.
17. In addition, Mr Tomuli is disqualified from the two competitions on 22 October and 30 October 2005 respectively, in accordance with Article 10.1 of the WADA Code.



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Hon Barry Paterson QC
Chairman

28 April 2006