

**BEFORE THE SPORTS DISPUTES TRIBUNAL
OF NEW ZEALAND**

STD 09/05

Anti-Doping Violation Application

BETWEEN

NZ FEDERATION OF BODY BUILDERS INC.

Applicant

AND

STEVEN WARD

Respondent

**DECISION OF TRIBUNAL
7 October 2005**

Present:

M Stewart for Applicant
S Ward in person as Respondent

Tribunal Members Participating:

Hon Barry Paterson, QC (Chairman)
Kit Toogood QC
Farah Palmer
Registrar – Brent Ellis

INTRODUCTION

1. Mr Ward is a member of the New Zealand Federation of Body Builders Inc. ("NZFBB"). As such he competed in the Capital Body Building Championships at Wellington on 7 May 2005. A sample was taken from him by the New Zealand Sports Drug Agency ("the Agency") which on 24 June 2005, issued a Notice of Determination that Mr Ward had committed a doping infraction. The sample taken from Mr Ward contained Stanozolol, Nandrolone and Furosemide. These drugs are banned by the World Anti-Doping Code 2005 Prohibited List International Standard under S 1 (Anabolic Agents) and S 5 (Diuretics and Other Masking Agents).
2. During a telephone conference, originally scheduled as a pre-hearing conference, on 3 October 2005, Mr Ward admitted that he had made a conscious decision to take the drugs and that that decision had now backfired on him. He was advised that the drugs would assist his performance and he took them knowing of the consequences if he got caught.
3. Mr Ward accepted that the provisions of the World Anti-Doping Code ("WADA Code") applied to him and consented, as did Mr Stewart on behalf of NZFBB, to the pre-conference hearing being converted to the hearing to consider the sanction. In accordance with Rule 11.8.2 of the Tribunal Rules, the hearing proceeded accordingly.

THE NZFBB CONSTITUTION

4. Clause 20.1 of the NZFBB Constitution provides that all matters relating to doping will be dealt with in accordance with the Federation's Anti-Doping Rules, Regulations and Bylaws. The NZFBB has an anti-doping policy. It provides in paragraph 7.1 that "*all persons to whom this policy applies may be subject to investigation and sanction under this policy if they commit or are party to any one or more of the Anti-Doping Rule Violations set out in Article 2 of the WADA Code*".
5. Paragraph 10.1 of the Policy provides that every person who commits an Anti-Doping Rule Violation is liable for sanction in accordance with Article 10 of the WADA Code.
6. Paragraph 12 deals with hearings in respect of such Anti-Doping Rule Violations. The athlete has a right to a fair hearing as detailed in Article 8 of the WADA Code, the matter must be referred to this Tribunal for a hearing, and the Tribunal will accept as a proven fact a positive Test Result determined by a test conducted by the Agency

in accordance with its statutory provisions. If this Tribunal determines that an Anti-Doping Rule Violation has been committed, the Tribunal shall impose sanctions in accordance with paragraph 10 of the Policy which adopts the sanctions in Article 10 of the WADA Code.

7. It follows from these provisions that the Tribunal accepts as a fact the determination of the Agency and is required after a fair hearing to impose sanctions in accordance with Article 10 of the WADA Code.

THE WADA CODE

8. The relevant provision of Article 10 of the WADA Code is 10.2, part of which provides:

“Except for the specified substances identified in Article 10.3, the period of ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance) shall be:

- First Violation: 2 years’ ineligibility”

9. In this case the Prohibited Substances are not Specified Substances under Article 10.3. The violation is of Article 2.1 which deals with the presence of a prohibited substance in an athlete’s bodily specimen.

10. Under Article 10.2 the athlete “*shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing the sanction as provided in Article 10.5.*”

11. Article 10.5 deals with concepts of “*no fault or negligence*” and “*no significant fault or negligence*”. Mr Ward accepted before the Tribunal that he did not and could not, seek to rely on the provisions of Article 10.5.

12. Article 10.8 of the WADA Code provides that the period of ineligibility shall start on the date of the hearing decision providing for ineligibility.

DECISION

13. Mr Ward has accepted that he committed an Anti-Doping Violation. Under Article 10.2 of the WADA Code, the mandatory sanction is a period of two years’ ineligibility for a first violation. Mr Ward does not seek to have that period eliminated or reduced

under the provisions of Article 10.5. It follows that the sanction in Mr Ward's case is a period of ineligibility of two years.

14. Under Article 10.8 of the WADA Code, the period of ineligibility shall commence from the date of this Decision.
15. The Tribunal's Decision is that Mr Ward be ineligible (i.e. suspended) for a period of two years from the date of this Decision.
16. For avoidance of doubt, it is noted that under Article 10.9 of the WADA Code Mr Ward is ineligible to participate in any capacity in a competition or activity (other than authorised anti-doping education rehabilitation programmes), authorised or organised by NZFBB or any other signatory to the WADA Code.



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Hon B J Paterson QC
Chairman of Sports Disputes Tribunal

7 October 2005