

**BETWEEN**                      **DRUG FREE SPORT NEW ZEALAND**  
**Applicant**

**AND**                              **KAVOSSY FRANKLIN**  
**Respondent**

**AND**                              **BASKETBALL NEW ZEALAND**  
**Interested Party**

---

**REASONS FOR DECISION OF TRIBUNAL  
Dated 18 August 2010**

---

Hearing:                      by conference call on 18 August 2010

Attendances:                Paul David, counsel for Applicant  
Graeme Steel and Jayne Kernohan for Applicant  
Stephen Layburn for Basketball New Zealand

Panel:                         Alan Galbraith QC, Deputy Chairman  
Carol Quirk  
Tim Castle

Registrar:                    Brent Ellis

**Introduction**

1. The decision of the Tribunal made on Wednesday 18 August 2010 was that Kavossy Franklin was suspended and therefore ineligible from participation in any sport which is a signatory to the World Anti-Doping Code up to and including 23 June 2012.
2. That decision was the consequence of an application for an anti-doping violation determination by Drug Free Sport New Zealand after the respondent underwent an in-competition drug test after the NBL game between Harbour Heat and Bay Hawks on 21 May 2010.
3. A breach of Rule 3.1 of the Sports Anti-Doping Rules (2010) was alleged based on the presence of a prohibited substance, cannabis, in his system.
4. Both the A and B samples were tested at an accredited sports drug testing laboratory and both returned an adverse analytical finding for the prohibited substance, cannabis.

**Plea**

5. Mr Franklin has admitted the violation in email correspondence with the Tribunal.

**Hearing**

6. A provisional suspension order had previously been made commencing on 23 June 2010. Subsequent to that order Mr Franklin was served with the formal application. Subsequent email correspondence with Mr Franklin by Mr Ellis, Registrar of the Tribunal, detailed to Mr Franklin the necessity for him to provide evidence to the Tribunal as to how the violation had occurred and that there had been no intention to enhance his sports performance together with the need for him to provide corroborating evidence. That email correspondence was supplemented by telephone discussions between Mr Ellis and Mr Franklin.

7. The Tribunal is satisfied that Mr Franklin has been made fully aware of the opportunity which he has under the Rules to explain the violation and mitigate the length of penalty which is otherwise provided for. Drug Free Sport's application was initially set down for hearing on Thursday 12 August but Mr Franklin had difficulties in joining the telephone conference and accordingly the hearing was adjourned until Wednesday 18 August 2010. On this latter date, Mr Franklin did not join the telephone conference and Mr Ellis was unable to directly communicate with Mr Franklin by telephone. Mr Ellis did leave a message on Mr Franklin's phone asking him to phone in or contact Mr Ellis but no such contact was made.
8. The Tribunal is aware from previous discussions which Mr Ellis had with Mr Franklin that Mr Franklin felt unable, for personal reasons, to provide the evidence of a corroborating witness. The Tribunal understands that in some circumstances it may be difficult, or even impossible, for an athlete to provide corroborating evidence but, in its absence, the Tribunal is left with no discretion under the Rules. Of course, in the present case the Tribunal does not have either corroborating evidence or the direct evidence of Mr Franklin.
9. In those circumstances the Tribunal has no discretion other than to impose a period of suspension for two years commencing on the date of provisional suspension, 23 June 2010, and therefore expiring on 23 June 2012.
10. The suspension will apply to all sports that are signatories to the Code. Mr Franklin is now living in the USA. The Tribunal notes that the suspension will apply to Mr Franklin wherever he is in the world and not just in New Zealand.

DATED this 18<sup>th</sup> day of August 2010



.....  
A R Galbraith QC  
Deputy Chairman