

BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 10/07

Anti-doping rule violation proceedings

**BETWEEN NEW ZEALAND FEDERATION OF BODY BUILDERS
INCORPORATED**

Applicant

A N D NIKO TOLUONO

Defendant

Tribunal: Kit Toogood QC (presiding member)
Ron Cheatley
Adrienne Greenwood

Representation: Mark Stewart on behalf of New Zealand Federation of Body
Builders Inc

No appearance by defendant

In attendance: Brent Ellis (Registrar)

Hearing (by telephone
Conference): 19 September 2007

DECISION OF TRIBUNAL
Dated 20 September 2007

The Tribunal is satisfied that, on 30 June 2007 at Auckland, Niko Toluono committed an anti-doping violation by failing, without reasonable cause, to comply with a request to provide a sample under the New Zealand Sports Drug Agency Act 1994 and the Sports Drug (Urine Testing) Regulations 1994. The decision of the Tribunal is:

- (a) Niko Toluono is ineligible to participate in sport for a period of two years from 20 September 2007. Article 10.9 of the World Anti-Doping Code,**

and paragraph 10.3 of the Anti-Doping Policy of the New Zealand Federation of Body Builders Inc, will apply during the two year period.

- (b) In accordance with the anti-doping policy of the Federation, Mr Toluono is disqualified from the event in which he competed in the Auckland Championships on 30 June 2007.

Introduction

[1] On 1 August 2007, the Tribunal received from New Zealand Federation of Body Builders Incorporated (“**NZFBB**”) an application against Niko Toluono, under Rule 11.2 of the Tribunal’s 2003 Rules, alleging that the Board of Drug Free Sport New Zealand had determined that, on 30 June 2007 at Auckland, the defendant did not have reasonable cause to fail to comply with a request to provide a sample under the New Zealand Sports Drug Agency Act 1994 and regulations made thereunder.

[2] By reason of the Anti-Doping Policy of NZFBB, the Tribunal has jurisdiction to determine the remedy to be imposed in respect of the violation.

[3] The defendant was served with copies of the application and associated papers on 3 August 2007 and had, in accordance with rule 11.3.2(b), five working days to indicate whether he wished to defend the application. The defendant took no steps under the Tribunal’s rules to indicate whether he wished to defend the application and the Registrar of the Tribunal made several attempts to contact Mr Toluono directly by telephone, without success.

[4] Rather than proceeding directly to convening a pre-hearing conference under rule 11.3.5, the Tribunal directed the Registrar to deliver, to the address at which the defendant was served with the application, a copy of the Tribunal’s Minute of 23 August 2007. The Minute invited the defendant to indicate to the Registrar within three days of delivery of the Minute whether he wished to defend the application, in default of which the Tribunal would convene a pre-hearing conference in accordance with the rules and deal with the application.

[5] The defendant did not respond to the delivery of the Minute, nor did he participate in the telephone conference convened by the Tribunal yesterday, notice of which was also given by a Minute dated 5 September 2007 delivered to him early on 7 September.

Discussion

[6] The Tribunal has examined the application and the documents submitted with it and subsequently served on the defendant. We are satisfied that, on 30 June 2007 at Auckland, Niko Toluono committed an anti-doping violation by failing, without reasonable cause, to comply with a request to provide a sample under the New Zealand Sports Drug Agency Act 1994 and the Sports Drug (Urine Testing) Regulations 1994.

[7] In terms of Article 10 of the World Anti-Doping Code, which is applied by paragraph 10.1 of NZFBB’s Anti-Doping Policy, the mandatory period of ineligibility for the violation is

two years. The defendant having taken no part in the proceedings and, therefore, offering no basis for eliminating or reducing the sanction as provided in Article 10.5 of the WADA Code, the Tribunal directs that:

- [a] Niko Toluono is ineligible to participate in sport for a period of two years from 20 September 2007. Article 10.9 of the World Anti-Doping Code and paragraph 10.3 of the Anti-Doping Policy of New Zealand Federation of Body Builders Inc will apply during the two year period.
- [b] In accordance with the Anti-Doping Policy of the Federation, Mr Toluono is disqualified from the event in which he competed in the Auckland Championships on 30 June 2007.

[8] A copy of this decision shall be delivered to the address of the defendant shown in the application.

A handwritten signature in blue ink, appearing to read 'C. Hayward', is written over a faint rectangular stamp.

Deputy Chairperson, for the Tribunal