BEFORE THE AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel

United States Anti-Doping Agency,

Claimant,

v. Case Number: 30 190 00475 03

Frankie Caruso III

Respondent,

ARBITRAL DECISION AND AWARD

WE, THE UNDERSIGNED ARBITRATIORS, having been designated by the above named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND AND AWARD as follows:

I. HISTORY

On July 22, 2003, the above matter was heard before a panel of three Arbitrators selected pursuant to the American Arbitration Association Procedures for Arbitration initiated by the United States Anti-Doping Agency (USADA) at the request of Frankie Caruso III (Respondent).

The Claimant, USADA, was represented by William Bock, III, attorney and Travis T. Tygart, attorney. The Claimant represented the interest of USA Boxing, the National Governing Body responsible for upholding the Anti-Doping Rules of the Association Internationale DeBoxe Amateur (AIBA), the International Federation for the sport of Boxing. Respondent appeared with his parents and was represented by Mark Gaylord,

attorney, and Stephanie Adams, attorney.

II BACKGROUND

Respondent Frankie Caruso is a member of USA Boxing, competing as a boxer in the 125 pound, or feather weight class. Respondent competed in the Men's U.S. Championship tournament, which was held in Colorado Springs, Colorado from March 24 – 28, 2003. The tournament was sponsored by USA Boxing, the United States National Governing Body for the sport. USA Boxing is the U.S. national federation affiliated with the International Federation (IF) known as the Association Internationale De Boxe Amateur (AIBA). The tournament was part of the competition leading to selection of the U.S. Olympic boxing team. Respondent reached the quarterfinals in the tournament.

Respondent was nineteen years old at the time of the 2003 U.S. Championships. It was his third participation in either a Men's U.S. Championship, or a National boxing championship event. Respondent qualified for the U.S. Championships in the 125 pound weight class. After the conclusion of his quarter final bout, which he lost 25 – 4, he was selected for drug testing by USADA. Respondent disclosed to the USADA representative that within the three preceding days he had taken two hydroxy-cut pills; a "water pill"; and a Centrum pill.

The parties agreed, by stipulation, that the USADA Protocol and the AIBA Rules apply to this Hearing; that the urine sample designated as USADA sample number 469234 is the Respondent's sample and was provided by him after his last boxing match

at the USA Boxing Men's U.S. Championships; that there is no contest that the collection, transportation, or chain of custody of Respondent's sample were improper in any way; that the UCLA Laboratory finding of furosemide in Respondent's was correct and accurate; that furosemide is a prohibited, or banned substance under the AIBA Rules; and that Respondent has committed a doping violation and that the finding of furosemide in his urine is a doping violation. Respondent was guilty of doping.

III APPLICABLE LAW

The parties also agreed that certain rules were applicable to this Arbitration.

A. USADA Protocol

The USADA Protocol for Olympic Movement Testing at Section 9.b.i:

"If the sanction is contested by the athlete, then a hearing shall be conducted pursuant to the procedures set forth below."

The procedures at v., p 9. provide:

> In all hearings conducted pursuant to this procedure the applicable IF's categories of prohibited substances, definition of doping and sanctions shall be applied. In the event an IF's rules are silent on an issue, the rules set forth in the Olympic Movement Anti-Doping Code shall apply.

B. AIBA Articles of Association and Rules for International Competition and Tournaments.

The AIBA is a "... non profit making international organization comprising the Amateur Boxing Association of all countries which have a national governing body controlling amateur boxing and which having accepted and agreed to abide by the Articles herein contained, ..." Article I. B., p. 3.

USA Boxing is the national governing body for the sport of amateur boxing in the United States that is recognized by and affiliated with the AIBA and which sanctioned

the Men's National Boxing Championship in compliance with the AIBA Rules and Articles.

The AIBA Rules at p 52 provide:

Rule XXII Administration of Drugs,

A. Doping. The Administration of or use by competing boxer of any substance foreign to his body or of any physiological substances taken... into the body with the sole intention of increasing in an artificial and unfair manner his/her performance /i.e.'doping'/ is prohibited. The AIBA Doping Regulations are in conformity with those of the IOC and do not differ in any respect. These regulations are by-law to this Rule.

D. Prohibited Drugs. The IOC list of banned substances shall constitute AIBA's list of banned substances. Any boxer taking such substances... shall be subject to the penalties. AIBA may ban additional substances upon the recommendation of the AIBA Medical Commission.

C. **Doping Regulations of AIBA contained in the Medical Handbook of Amateur Boxing, Fifth Edition.**

The Medical Handbook of AIBA is also applicable. Appendix I at 44-5 provides at:

ArticleXXVIII/ C. Doping.

2. A boxer who has been found guilty of doping may be punished by suspension from any competition for a period up to two years...

4. In the case of doping being proved, the result of competition shall be declared invalid.

The Doping Regulations of AIBA.

"Basic Principle: AIBA's doping regulations are in conformity with those of the IOC and do not differ in any respect.

1. Prohibited classes of substances...

D. Diuretics
Prohibited substances in class (D) include the following examples:

Acetazolamide,....furosemide,...and related substances."

D. Olympic Movement Anti-Doping Code

The applicable Olympic Movement Anti-Doping Code (OMAC) provisions are as follows:

Chapter I Article1:
DEFINITIONS:

Participant means any athlete,...preparing for sports competitions of the Olympic games,...organized under the authority, ...of an IF or NOC. (Here AIBA or USOC/USA Boxing).

Prohibited Substances means any substance so described in this Code.

Article 2:

1. This Code applies to all Participants.
All athletes are subject to doping controls (urine analyses, blood tests and other authorized techniques for detecting prohibited substances or methods).

Chapter II The Offense of Doping and its Punishment

Article 1:

2. Doping is forbidden.

Article 2:

Doping is:

2. the presence in the athlete's body of a Prohibited Substance or evidence of the use thereof...

Article 3:

1. In a case of doping, the penalties for a first offence are as follows:

b) III) suspension from any competition for a minimum period of two years. However, based upon exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for a possible modification of the two-year sanction.

IV. THE PARTIES SUBMISSIONS

This matter was heard by the panel on July 22, 2003. Respondent testified and called the following witnesses; Celeste Caruso, his mother; Sandra Sanders, a counselor at the East Parish Rec. Center; Gregory Bandao, Principal of Catholic High School, Baton Rouge, LA; Warren Migues, Treasurer, and Registration Chairman of the Southern Association and Eric Parthen, Executive Director of USA Boxing.

Mrs. Caruso, Ms Sanders and Mr. Bandao testified as to the character of Frankie Caruso III. Mr. Migues testified about respondent's local boxing history, and membership in the Southern Association, a regional boxing association, affiliated with USA Boxing. Mr. Parthen outlined USA boxing's activities regarding USADA issues and how it structures its Olympic team tryouts, and competition.

USADA's only witness was Jeff Podraza, a licensed pharmacist who responds to phone calls by athletes, and others, to the USADA Drug Hotline.

Respondent has been boxing in competition since April 11, 1992. He was born April 17, 1983 and presently is 20 years old. His father, Frank Caruso, has been his primary coach for his entire boxing career. In addition he has had other coaches over the years. His Boxing Passbook reflects 117 boxing matches over his career to date. (Ex. z).

Respondent is a graduate of Catholic High School in Baton Rouge, LA. He presently is enrolled in pre-veterinary medicine at Louisiana State University. He is a recipient of a scholarship from USA Boxing.

Respondent's mother is a Registered Nurse, practicing in the ER and OBGYN ward of the Baton Rouge hospital where she is employed. Respondent's father, in addition to his boxing activities, is a narcotics officer with the Baton Rouge police department. Respondent boxes in the Featherweight class, which weight ranges are from 119 pounds to 125 pounds. Respondent outlined his tournament training regimen, along with his constant efforts to maintain his weight at or very near the 125 lb. limit. It appears his weight would vary one to two pounds overweight on a regular basis, depending upon his workout and eating schedule. To be overweight would force him to box at the next heaviest weight class, a distinct disadvantage since he would be spotting the heavier boxers in that class up to 14 pounds. See AIBA Rules for International Competition or Tournaments, VI B., p. 31.

Respondent would run, wear sweat inducing plastic or nylon warm-up clothes, and jump rope regularly, and closely watch his food and water intake before each match. His routine never varied and he appeared to weigh in at 125, 124.2, and 125 pounds before each of his matches in the tournament in question. (Ex. z) Respondent boxed in three matches in the USA Boxing Men's U.S. Nationals competition. Preparatory to his matches he kept up his dietary and exercise routine, except the day before his quarter final match, while working out, his mother, Celeste Caruso, gave him a "water pill", and told Frankie "..this will make you pee". , That would obviously help him lose excess water weight, and assist him in keeping within his weight class.

The "water pill" was Lasix, or furosemide, a prescribed medication for Celeste Caruso, taken upon instructions from her doctor. She testified she gave the pill to respondent, not knowing whether it was a banned substance. In addition she gave it to her son without

benefit of either a prescription or medical advice to him about the use of furosemide, its side effects, or potential hazards to his health.

The testimony of Mrs. Caruso was that her husband - respondent's coach, was aware of the use of the "water pill", but was not in the room when she gave it to Frankie. It is hard to believe Frank Caruso, respondent's father/coach was not aware of the use, but he did not testify so the issue perhaps remains open.

Mrs. Caruso proclaimed in the letter signed by her, respondent and Frank Caruso, of May 14, 2003, to the USADA Review Board, "...we had NO IDEA that the fluid pill that I gave was a banned substance." (Ex. J). Respondent's testimony also was consistent with that position. He testified he was not aware of what a banned substance was, other than marijuana, methamphetamine, cocaine, and other "illegal" street drugs. They further found ".. it difficult to understand how ... USA Boxing ... does not get this NEEDED and REQUIRED information out to its athletes before actually testing them... it should also be noted that our Boxing Association and many other coaches,...have NEVER received such information from ...USA Boxing..."

On February 26, 2003, about one month before the tournament in question, as a requirement to compete in the tournament, respondent signed the following document (set in the following font and type):

"**UNITED STATES AMATEUR BOXING, INC.**
OFFICIAL DRUG TESTING NOTIFICATION

DRUG TESTING

I UNDERSTAND THAT DRUG TESTING WILL BE CONDUCTED ON A FORMAL BASIS FOR THESE USA BOXING EVENTS AND THAT THE DETECTION OF USE OF BANNED SUBSTANCES (ON THE IOC/USOC LIST OR INCLUDED IN USA BOXING'S OFFICIAL RULES) WOULD MAKE ME SUBJECT TO DISQUALIFICATION FROM THESE AND ANY REMAINING ADVANCEMENT IN THESE EVENTS AS WELL AS ELIGIBILITY FROM USA BOXING AND USOC EVENTS AND ACTIVITIES FOR A MINIMUM PERIOD IMPOSED BY USA BOXING'S NATIONAL BOARD OF REVIEW, WHICH INCLUDE THOSE SUGGESTED/RECOMMENDED BY THE IOC/USOC DOPIN/DRUG TESTING PROGRAM SUBJECTS ME TO THE SAME PENALTIES...I KNOW THAT I MAY CONTACT A PHYSICIAN MEMBER OF THE SPORTS MEDICINE COMMITTEE OF USA BOXING OR CALL THE DRUG HOTLINE, 1-800-233-0393, TO SATISFY ANY QUESTION(S) OR CONCERN(S) THAT I MAY HAVE ABOUT MEDICDATIONS, BANNED SUBSTANCES AND PRACTICES.
Signed Frankie Caruso
Signed Frank Caruso (boxer's coach)"

In addition, on March 23, 2003, as a condition to competing in the U. S. Men's championships, respondent was required to sign a USA Boxing Athletic Code of Conduct. The code stated in pertinent part that the boxer:

> 10. will refrain from using any substance on the Olympic Movement Anti-Doping Code or Association Internationale de Boxe Amateur (AIBA) banned substance list, as enforced by WADA, and USADA, and will abide by the drug testing procedures of USADA, WADA, and the USOC;
>
> 11. will abide by the policies and rules established by USA Boxing, the USOC, and the Association Internationale De Boxe Amateur (AIBA);

The record and testimony further reflected that respondent, and his coach, had signed similar documents the previous year when he also competed in the USA Boxing U.S. Men's Championships in Las Vegas, NV.

The testimony of Warren Migues, a 26 year member of the Southern Association, was that he had rarely seen USA Boxing personnel at the many tournaments he attended or supervised, and he had little if any knowledge of either USADA or its doping policies. He was not aware of any of AIBA's rules and had never seen it's Medical Handbook. He acknowledged the Southern Association was a member of USA Boxing, and its coaches and officials had to be certified every two years to maintain their status with USA Boxing. Coaches are required to know the USA boxing rules and as a member of USA Boxing do get regular mailings from USA Boxing. It was not refuted that Mr. Frank Caruso has been a certified coach for USA Boxing, and the Southern Association for many years. Mr. Migues was familiar with the Caruso family and aware that respondent's father was respondent's coach over the years.

Eric Parthen, the Executive Director of USA Boxing outlined the Olympic team competition tournament process. The U.S. Men's Championships, held in March 2003, was part of that process. He stated the top level elite boxers are made aware of USADA mandates, for in and out of competition testing, along with the complete listing of banned substances. He stated Frankie Caruso III was not on that list. USA Boxing has not had a website that allows its rules and regulations to be downloaded. It does not send its rules to each of it's some 30,000 members. USA Boxing does send a magazine to its members, particularly to its officials and certified coaches. The November 2002 issue of the USA Boxing magazine, sent to coaches and officials, had an article describing the latest USADA rules.

USADA's sole witness was Mr. Jeff Podraza, a registered and licensed pharmacist. Mr. Podraza is responsible for answering calls made on the USADA Drug Hotline. It is

designed to answer athlete inquires about any substance they may wish to use to determine if the item might contain a banned substance. He had no record of a call from respondent, but the hotline is designed to be a confidential process and athletes rarely disclose their name, or athletic event. He confirmed that the diuretic in this instance furosemide, or Lasix, needs a doctor's prescription to be legally used, and is a banned substance prohibited for athletes usage..

V. LEGAL ARGUMENT

Respondent asserts the language of the Olympic Movement Anti-Doping Code (OMAC), at Chapter II which states in pertinent part:

> b) III) suspension from any competition for a minimum period of two years. However, based upon exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for a possible modification of the two-year sanction.

Respondent's argument is that exceptional circumstances exist in this case to allow a lesser sanction than recommended. Respondent states that he has been a model student; has been awarded one of USA Boxing's highest awards (the Nunnally award); has never had any prior incidents of banned substance violation; and had absolutely no knowledge of USADA, its drug/doping rules, nor of any other drug rules from any boxing association; did not intend to use this "water pill" to enhance his performance.

Respondent relies upon *USADA v. Pastorello* (AAA 31-190-00164) and *Kabaeva v. FIG*, TAS 2002/A/386 for the proposition that sanctions can be modified due to the exceptional circumstances which appear from the facts in each case. In *USADA v.*

Pastorello the AAA panel did reduce the sanction from 24 months to 18 months. Upon appeal in *Pastorello v. USADA,* TAS 2002/A/363 a CAS panel affirmed the sanction imposed by the AAA panel stating:

> *On the facts of this case*, although the Panel has considerable misgivings about the AAA's reduction of the sanction below a mandatory minimum, as well as about the conditions imposed as a purported justification for that reduction and the jurisdiction to impose such a condition, it has concluded, *with considerable reluctance*, that, *on this occasion*, it should not interfere the AAA's decision. (emphasis added).

In *Kabaeva,* supra, a similar departure from the minimum required sanction was granted. In *Kabaeva* the athlete's federation had approved a diet supplement that apparently had been contaminated with a diuretic banned substance. Upon discovery through competition testing the athlete was suspended for two years, but her hearing panel reduced the sanction to a one year suspension. Again on the unique facts of that case, i.e. the athlete's federation approving the supplement, her coach encouraging her to use the supplement and her proclaimed lack of knowledge, and her young age (18).

USADA asserts respondent is "guilty" of this violation, pursuant to his stipulation, and the presumptions set forth in *Aanes v. FILA,* CAS, 2001/A/317. *Aanes* states that it is presumed that the athlete"...knowingly or at least negligently consumed the substance which has lead to the positive doping test". Accordingly the burden of proof shifts to the athlete to show why, in the use of a diuretic, the maximum sanction should not apply. See, *Wang Lu Na v. FINA,* CAS 98/208.

The shifting of burdens rational was set out in *Aanes* as follows:

> "...it would put an end to any meaningful fight against doping if the federations were required too prove the necessary subjective

> elements of the offence, i.e. intent or negligence on the part of the athlete... it would be all to simple for an athlete to deny any intent or negligence...when weighing the interests of the federation to combat doping and those of the athlete to be punished without fault the scales tip in favour of the fight against doping. In fact, doping only happens in the sphere of the athlete, of what he/she eats and drinks, of who has access to his/her nutrition, of what medication he/she takes, etc. In these circumstances it is appropriate to presume that the athlete has knowingly or at least negligently consumed the substance which has led to the positive doping test.

In the instant case it is quite apparent respondent is in fact a good citizen. He is a role model in his local boxing club, and has excelled in his educational activities. But as asserted by USADA that is not an exceptional circumstance that supports departure from the recommended sanction. Obviously a good citizen can be negligent in his/her athletic endeavors. In the Panel's view respondent was very negligent in his training methods preparatory to his quarterfinal match in this tournament. Taking a "water pill" without any question of potential consequences to himself, or others, is negligence. The panel concludes his good citizenship is not a matter that provides for an exception to the recommended sanction.

Respondent indicated it was not his intent to enhance his performance with the ingestion of furosemide. While that is his testimony, it is very clear that a training method that allows an athlete to enter a match without the rigorous preparatory efforts at weight loss, sweating, running and rope jumping puts him/her at a distinct advantage. Indeed his mother was concerned about that rigorous activity when she gave him the furosemide. In addition to less pre-fight physical activity it allowed respondent to maintain his weight class easier. As noted by USADA, respondent did in fact gain a competitive edge over his competition where size and weight are a distinct advantage. Indeed if respondent were eliminated from his weight class, he would not have been able to compete in any weight

class at that event since his qualification was to the 125 class. A real incentive to maintain his status in the 125 pound class. Respondent's proclaimed lack of intent, in the light of *Aanes,* supra, and the facts of this case, does not provide an exception to the recommended sanction.

Lack of knowledge of USADA, AIBA, or USA Boxing rules involving banned substances was strongly asserted at all stages of respondents testimony and submissions. As noted above respondent's coach was required to be informed about USA Boxing rules and its policies involving banned substances, the list of such banned substances, and random drug testing. The evidence was that he was informed about USADA issues in the November 2002 edition of USA Boxing's magazine, which was mailed to all of it's certified coaches. In addition he also signed the drug testing notification form as noted above.

> USADA cross examination of respondent reflected prior knowledge of the potential hazards of taking banned substances. The acknowledgement of the USA Boxing drug testing requirements, signed by respondent, and his coach, along with the USA Boxing Athlete Code of Conduct he also signed, put him on knowledge regarding drug testing for banned substances and sanctions. The Drug Hotline was also available for inquiry about such matters. (Ex. 14,15) Respondent was made aware of USADA, AIBA, USOC, and USA Boxing rules prohibiting use of banned substances. He has been aware of those issues for at least the past two years of his national competition. Here, a very bright student has apparently chosen to

ignore warnings he signed regarding drug issues and information about agencies charged with drug testing and enforcement of sanctions.

It is the panel's conclusion that respondents proclaimed lack of knowledge is without foundation and does not provide an exceptional circumstance to the recommended sanctions.

VI. CONCLUSIONS

The panel has reviewed the submissions of the parties and has concluded as follows.

1. Respondent, Frankie Caruso III has violated the rules and regulations of USA Boxing, AIBA, and the Olympic Movement Anti-Doping Code by use of a banned substance i.e. a diuretic, forosemide.
2. Respondent is subject to the penalties set out in Article 3, 1 b) III) suspension from competition for a minimum period of two years.
3. Respondent has not provided exceptional circumstances which allow for modification of the two year sanction.

VII. SANCTIONS

Based upon the conclusions set our herein, it is the panel's determination the following sanctions shall be imposed:

1. Frankie Caruso III shall be suspended from all sanctioned USA Boxing competition for a period of two years, commencing April 10, 2003.
2. The results of Frankie Caruso III's boxing competition at the U.S. Men's Championship held in March, 2003 are declared invalid.

In view of the various rules and regulations applicable in this case, each party shall bear its own costs and attorney's fees.

The Administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne entirely by USADA.

This Decision and Award is in full settlement of all claims submitted to this arbitration.

Hon. PETER J. LINDBERG, Arbitrator and Panel Chairman

EDWARD T. COLBERT Esq., Arbitrator

SAMUEL D. CHERIS, Esq., Arbitrator

Dated August 6, 2003