

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

In the Matter of Arbitration Between:

Re: 77 190 514 09
United States Anti-Doping Agency
and
Val Barnwell

Preliminary Award Regarding Provisional Suspension

This matter came before the Panel as a consequence of the United States Anti-Doping Agency's ("USADA") determination that a provisional suspension should be imposed upon Val Barnwell ("Athlete") pursuant to Article 12(a) of the USADA Protocol for Olympic and Paralympic Movement Testing (the "Protocol") and Article 7.5.1 of the World Anti-Doping Code (the "Code").

1. A telephonic probable cause hearing (the "Provisional Hearing") was held on December 10, 2009, on the question of whether USADA's decision to impose a provisional suspension against Athlete shall be upheld. USADA was represented by Mr. William Bock, Esq., and Mr. Steven Starks, Esq., Legal Affairs Director at USADA. Neither Athlete nor his Counsel, Mr. Hugh Reid, Esq., appeared. Mr. Reid had communicated to AAA just prior to the hearing that they would not participate. USADA presented the testimony of Dr. Daniel Eichner, Science Director of USADA. In addition, information as to notice was provided by USADA.
2. The United Medix Laboratories, Ltd. reported an Adverse Analytical Finding on Athlete's A Sample collected in competition on August 3, 2009 (Sample #A1871431 for a Prohibited Substance (which is not a "Specified Substance" within the meaning of Article 4.2.2 of the Code). In accordance with Article 7.5.1 of the Code, USADA is required in such circumstances to impose a provisional suspension promptly after review as to whether an applicable therapeutic use exemption has been granted or there is any apparent departure from the standards applied to laboratories.
3. As required by Section 7.2 of the Code, USADA notified Athlete by letter dated October 29, 2009, which was received on November 3, 2009, that he had until November 5, 2009, to accept a provisional suspension. Since Athlete did not accept the provisional suspension proposed by USADA by November 5, 2009, USADA requested by letter dated December 1, 2009, which Athlete's counsel received on December 1, 2009, that the Panel schedule a Provisional Hearing and render its determination on or before December 11, 2009.
4. The sole issue for the Panel to determine is whether USADA's decision that a provisional suspension should be imposed shall be upheld, based on whether probable cause exists for USADA to proceed with a charge of an anti-doping rule violation against Athlete. To establish probable cause, in accordance with Article 7.5.1 of the Code, it is not necessary for any B Sample analysis to have been completed.

The Panel, being duly advised, hereby finds:

- a. USADA complied with the review and notification requirements of the Code and by supplying Athlete, prior to the Provisional Hearing, on December 10, 2009 with any and all laboratory documentation in the possession of USADA for Sample #A1871431.
- b. USADA has met its burden of showing that probable cause exists for USADA to proceed with a charge of an anti-doping rule violation against Athlete. The Panel therefore upholds USADA's decision to impose a provisional suspension against Athlete (the "Provisional Suspension").
- c. The Provisional Suspension shall make Athlete ineligible to participate in any "Competition or Event", as such are defined in the Code, or from membership or inclusion upon any team organized or nominated by the United States Olympic Committee or any National Governing Body.
- d. The Provisional Suspension shall be in effect until the final hearing has been held and an award issued by the Panel or until the earlier of one of the following events: USADA and Athlete agree to a sanction, USADA withdraws its case against Athlete, or Athlete withdraws his request for arbitration or fails to prosecute his case resulting in imposition of a sanction.
- e. If within three (3) business days, Athlete submits to AAA any evidence in opposition to USADA's application for a provisional suspension, the Panel shall make a determination as to whether or not to reopen the Provisional Suspension hearing, failing which the Provisional Suspension shall be effective December 11, 2009.
- f. Athlete shall be entitled to have his case heard pursuant to the Expedited Track set forth in Section 13 of the Protocol, if he submits to the Panel a written request for such expedited treatment within three (3) business days from December 11, 2009.
- g. The parties shall bear their own costs and attorney's fees.

Walter Gans (CBW)
Walter G. Gans
Arbitrator
12/11/09

Deanna Reiss (CBW)
Deanna Reiss
Arbitrator
12/11/09

Carolyn B. Witherspoon 12/11/09
Carolyn B. Witherspoon
Chair