

**INDEPENDENT ANTI-DOPING DISCIPLINARY PANEL
JAMAICA ANTI-DOPING COMMISSION V DELMAR GRAHAM**

**DECISION ON JAMAICA ANTI-DOPING COMMISSION'S COMPLAINT
AGAINST DELMAR GRAHAM**

THE HEARING WAS HELD ON JULY 14, 2017

**CHAIR, INDEPENDENT ANTI-DOPING COMMISSION PANEL ON THE
UNANIMOUS DECISION OF THE PANEL COMPRISED AS FOLLOWS:**

**CHAIR: HUGH FAULKNER - ATTORNEY-AT-LAW
DR. DONOVAN CALDER -
MR. DIXETH PALMER -**

JAMAICA ANTI-DOPING COMMISSION, KINGSTON JAMAICA - COMPLAINANT

REPRESENTED BY LACKSTON ROBINSON, ATTORNEY-AT-LAW

V

DELMAR GRAHAM

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RESPONDENT

**Represented by Mr. Hugh Wilson, Attorney-at-Law
Norman Manley Law School
Legal Aid Clinic**

1. **The Anti-Doping in Sport Act 2014** Section 14 (1) requires establishment of an Independent Anti-Doping Disciplinary Panel; Section 15 (1) identifies the functions of the Disciplinary Panel which includes inter alia, to:
 - a) Receive, examine and hear evidence relating to Anti-Doping Rule Violation;
 - b) Conduct disciplinary hearings relating to Anti-Doping Rule Violations;
 - c) Determine whether an Anti-Doping Rule Violation referred to it by the Commission (The Jamaica Anti-Doping Commission established by Section 5, **The Anti-Doping in Sport Act, 2014**) has occurred.
2. At the Disciplinary Hearing held on July 14, 2017, a recommendation was made and facilitated to have legal representation for the respondent. Senior Counsel Mr. Hugh Wilson of the Norman Manley Legal Aid Clinic accepted the assignment *amicus curiae*. Mr. Wilson submitted mitigating arguments on behalf of the respondent on Monday September 11, 2017. Counsel for the Complainant responded to Mr. Wilson's submissions.
3. In the instant case the Complainant alleges that Mr. Delmar Graham an athlete in the sport of Bodybuilding was the subject of an out-of-competition testing on February 10, 2017. The complainant further alleges that the urine sample collected from the Respondent with the assistance of a Doping Control Officer was apportioned into two separate bottles labelled "A sample" and "B sample" bearing the code numbers 4026001A and 4026001B respectively.
4. The Complainant asserts that testing of the "A sample" was by the WADA accredited laboratory, INRS-Institute Armand Frapper, in Laval, Quebec Canada.
5. The laboratory results according to JADCO revealed the presence of prohibited substances in the "A Sample". The substances, **Trenbolone (Metabolites) and Testosterone**.
6. The World Anti-Doping Code, International Standard, Prohibited List which came into effect January 1, 2017 classifies substances that are prohibited in competition, and substances prohibited at all times.

7. JADCO's letter to the Respondent dated March 24, 2017 under the signature of Executive Director Mr. Carey Brown, identified Trenbolone as being listed as an Anabolic Agent in class S1 of the World Anti-Doping Agency's 2017 Prohibited list mentioned earlier. Testosterone is listed, according to the JADCO letter, as an Anabolic Agent in class S1 of the aforementioned WADA Prohibited list 2017. The Panel's own scrutiny of the list reveals at page 2 of the said Prohibited List the S1 Classification, Anabolic Agents.
8. Consequent on the above, the Complainant determined that the Respondent Athlete violated Article 2.1 of the JADCO Rules, found at page 17 of the JADCO 2015 Anti-Doping Rules.

Presence of a Prohibited Substance or its Metabolites or Markers in Athlete's sample.

9. Reference to Article 2 reveals among other things, the Athletes personal duty to ensure that no Prohibited Substance enters his or her body. An Anti-Doping Rule Violation occurs when the presence of a Prohibited Substance or its metabolites or markers is found in the Athlete's sample and except for those substances for which a quantitative threshold is specifically identified, then the question of quantum is not a pre-requisite that a disciplinary panel would explore.
10. Examination of the case bundle reveals that by letter dated April 3, 2017, the Respondent, Mr. Graham wrote to the JADCO Executive Director a missive captioned **Re: Explanation for the Presence of Prohibited Substances in the Urine Sample of Delmar Graham**. The Respondent in paragraph 4 of his letter accepts committing a breach of JADCO's Rules (Article 2.1). Mr. Graham included in his letter what he describes as "mitigating circumstances".
11. Article 7.14.1 states that "An athlete or other *Person* who has received notice of proceedings for an Anti-Doping Rule Violation in accordance with Article 7.13.2 may admit that violation, waive the required hearing by the Independent Anti-Doping Disciplinary

Panel and accept the *Consequences* mandated by these Rules.” This accords with JADCO’s duties outlined in Article 7.5.1.

12. The Article mandates that JADCO properly notifies the athlete in writing of the Adverse Analytical Finding. Article 7.5.1 of the 2015 Anti-Doping Rules goes further to state that *inter alia*, the Notification after review regarding Adverse Analytical Finding. Article 7.5.1 (m) the athletes’ right to waive his or her right to a hearing by acknowledging the Anti-Doping Rule Violation asserted and the identified consequences of the Anti-Doping Rule Violation.
13. By letter dated 24th March 2017, to the Respondent, JADCO at pages 2 and 3 outlined the consequences and the Respondent’s right to waive a hearing before the Independent Anti-Doping Panel. Having elected to utilize the provisions of 7.5.1(m), the Anti-Doping Panel must now determine the matter of sanction.
14. Counsel for the Respondent in his mitigatory plea argued that the Panel had first to determine whether the admitted violation was intentional before deciding the appropriate period of sanction. The Respondent through his Attorney further submits that while he knowingly took products to result in muscle growth, there is no information available to the Panel to show he was aware of the contaminating substance on the 2017 prohibited list. Counsel posited the view that in the absence of a hearing the Panel is without evidence to determine same. The Panel however notes that the burden to prove that the use of prohibited substance was not intentional rests with the Respondent.
15. The Counsel for the Complainant in his response to the submissions of Respondent’s Counsel urged the Panel to determine whether the waiver may be withdrawn by the Respondent, expressly or inferentially. The Panel forms the view that up to the morning before sanction was issued withdrawal of the right to waive a hearing may occur. However, nothing in the submissions on behalf of the Respondent, expressly or by inference seeks to withdraw the waiver. The Panel accepts that in the absence of a hearing where the facts

may be put in evidence, examination and cross examination take place, intention may be superficially delivered. A hearing is available to a Respondent. In the absence of a hearing, the Panel is obliged to give some weight to the explanation provided by the Respondent. Article 10.2 speaks Ineligibility for Presence, Use or attempted use, or Possession of a Prohibited Substance or Prohibited Method.

10.2.1 Mandated – the period of ineligibility should be four (4) years where:

10.2.1.1 States – The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other person can establish that the Anti-Doping Rule Violation was not intentional.

10.2.1.2 the Anti-Doping Rule Violation involves a Specified Substance and JADCO can establish that the violation was intentional.

16. This leaves the Independent Anti-Doping Disciplinary Panel to determine the matter of sanction which is addressed generally by Article 10 of the 2015 Anti-Doping Rules and specifically Article 10.2.

Article 10.2; Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited method.

The period for Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6
“10.2.1 - The Period of ineligibility shall be for four years where:

10.2.1.1 The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

10.2.1.2 The Anti-Doping Rule Violation involves a Specified Substance and JADCO can establish that the Anti-Doping Rule Violation was intentional.

10.2.1.2 - If Article 10.2.1 does not apply, the period of ineligibility shall be two years”.

17. In arriving at a decision the Panel also factors the provisions of Article 10.6.3 of the 2015 Anti-Doping Rules.

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1.

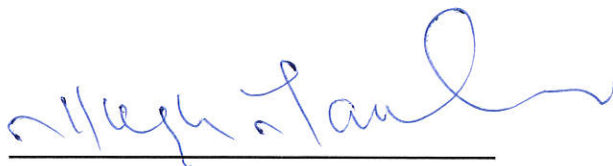
18. An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted Anti-Doping Rule Violation after being confronted by JADCO, and also upon the approval and at the discretion of both WADA and the Disciplinary Panel, may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete or other Person's degree of Fault.

Accordingly, the decision of the panel is to impose a two-year ban commencing March 24, 2017 and ending March 23, 2019

Kingston, Jamaica

The 7th day of December 2017

The Independent Anti-Doping Panel



Hugh Faulkner