AMERICAN ARBITRATION ASSOCIATION

In the Matter of
VAL BARNWELL **RESPONDENT**

v. **Case No. 77 190 514 09**

UNITED STATES ANTI-DOPING AGENCY **CLAIMANT**

FINAL ORDER

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments, and allegations of the parties, and, after an evidentiary Hearing ("Hearing" held on February 25 and declared the record closed and issued an Interim Award on February 26, 2010, do hereby render the Panel's Final Order, as follows:

1. PARTIES

1.1 The Claimant, USADA, is the independent anti-doping agency for Olympic sports in the United States and is responsible for conducting drug testing and adjudication of positive test results pursuant to the USADA Protocol for Olympic and Paralympic Movement Testing, effective as revised January 1, 2009 ("USADA Protocol").

1.2 At the Hearing, the Claimant was represented by William Bock III Esq., General Counsel at USADA, and Stephen Starks, Legal Affairs Director at USADA.

1.3 The Respondent is a 52-year old athlete with an accomplished career in track (and field) events. He has participated in multiple 100 m and 200 m events. At the 2008 World Masters Indoors Championship, he set the Men's 50 world record in the 60m dash. He participated in the 2009 World Masters as a member of the USA team, in which he won gold medals in the M50 100 m, and 200 m. Hugh Reid, Esq. represented the Respondent.

2. SUMMARY AND STIPULATIONS

2.1 The Respondent gave a urine sample on August 3, 2009, as part of the USADA In-Competition testing program at the World Masters Athletics Championships in Lahti, Finland. The specimen number was 1871431.

2.2 The Respondent later won gold medals in the 4 x 100 relay and the 4 x 400 relay.

2.3 The parties on or about January 4, 2010, stipulated to the following facts:

A. That the sample collections for both the A and B were conducted appropriately and without error.

B. That the chain of custody for the samples from the time of collection and processing to receipt at the Helsinki Laboratory, a World Anti-Doping Agency ("WADA") accredited laboratory in Helsinki, Finland ("the Helsinki Laboratory"), was conducted appropriately and without error.

C. That the Helsinki Laboratory's chain of custody was conducted appropriately and without error.

D. That the Helsinki Laboratory, through accepted scientific procedures and without error, determined through carbon isotope ratio ("CIR") analysis that the sample contained values consistent with the administration of a synthetic anabolic androgenic steroid in the A bottle.

E. That subsequently, due to equipment maintenance at the Helsinki Laboratory, the B analysis could not be conducted.

F. The parties agreed to send the A and B bottles to the WADA-accredited laboratory in Cologne, Germany ("the Cologne Laboratory") for analysis.

G. That the Cologne Laboratory's chain of custody was conducted appropriately and without error.

H. That the Cologne Laboratory, through accepted scientific procedures and without error, determined through CIR analysis that the sample contained values consistent with the administration of a synthetic anabolic androgenic steroid in both the A and B bottles.

I. That the Anabolic Androgenic Steroids are prohibited on the 2009 WADA Prohibited List.

J. That this is the Respondent's first doping offense.

K. That this Panel after a hearing provisionally suspended the Respondent effective December 11, 2009.

L. That the period of ineligibility will be a maximum of two (2) years, unless aggravating circumstances are established, in which case the maximum period of ineligibility will be four (4) years.

3. JURISDICTION

3.1 This Panel has jurisdiction over this doping dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act"), 36 U.S.C.§220501, *et seq.*, as this is a controversy involving the Respondent's opportunity to participate in national and international competition representing the United States. The Act states:

> An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . (a)(4) agrees to submit to binding arbitration in any controversy involving . . . (B) the

> opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . *any aggrieved amateur athlete* . . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and by-Laws . . . .[1]

3.2 Under its authority to recognize a NGB,[2] the USOC established its National Anti-Doping Policies,[3] the latest version of which is effective January 1, 2009 ("USOC Policies"), which, in part, provide:

> . . . NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol and NGB compliance with these policies and the USADA protocol shall be a condition of USOC funding and recognition.[4]

3.3 In compliance with the Act, Article 10(b) of the USADA Protocol provides that hearings regarding doping disputes "will take place in the United States before the American Arbitration Association ("AAA") using the Supplementary Procedures." [5]

4. RULES APPLICABLE TO THIS DISPUTE

4.1 The rules related to the outstanding issues in this case are the mandatory provisions of the WADA Code and the IAAF Anti-Doping Regulations.[6] The following constitute anti-doping rule violations under the WADA Code (2009):

> **2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample.**
>
> 2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

4.2 The comment to Section 2.1.1 addresses the rule of strict liability. The comment further notes that:

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[1] 36 U.S.C. §220521(a)(4)(A).
[2] 36 U.S.C. §220505(c)(4).
[3] The USOC has adopted the World Anti-Doping Code.
[4] USOC Policies, ¶13.
[5] The Supplementary Procedures refer to the American Arbitration Association Supplementary Procedures for the arbitration of Olympic Sport Doping Disputes, as approved by the USOC's Athletes' Advisory Council and NGB Council. 36 U.S.C. §220522.
[6] The WADA Code and the IAAF rules are nearly identical in wording. It is important, however, to set forth the applicable provisions. The key difference is that the WADA comments have been incorporated into the IAAF rules.

> . . . the Athlete then has the possibility to avoid or reduce sanctions if the Athlete can demonstrate that he or she was not at fault or significant fault . . . . The strict liability rule . . . with the possibility that sanctions may be modified . . . provides a reasonable balance between effective anti-doping enforcement . . . and fairness in the exceptional circumstances where a Prohibited Substance entered an Athlete's system through No Fault or Negligence or No Significant Fault or Negligence on the Athlete's part.

4.3 Section 2.2 of the WADA Code is entitled **Use or attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.**

> 2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or Prohibited Method.

4.4 Article 3 of the WADA Code addresses proof of doping.

> **3.1 Burdens and Standards of Proof**
>
> The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provide in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.
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> **3.2 Methods of Establishing facts and presumptions:**
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> Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases.

4.5 Article 10 of the WADA Code addresses the relevant sanctions for this case.

> **10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods.**
>
> The period of ineligibility imposed for a violation of Article 2.1 . . . Article 2.2 . . . or Article 2.6 . . . shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provide in Articles 10.4

and 10.5, or the conditions for increasing the period of Ineligibility as provided in Article 10.6 are met:

First Violation Two (2) years Ineligibility

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances.

Where an Athlete or other Person can establish how Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a Performance-Enhancing Substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First Violation: At a minimum, a reprimand and no period of Ineligibility for future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of the intent to enhance sport performance or mask the Use of a Performance-Enhancing Substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances.

10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

The Comment to Article 10.5.1 of the Code provides as an example where No Fault or Negligence would result in the total elimination of a sanction, a circumstance "where an Athlete could *prove* that despite all due care he or she was sabotaged by a *competitor*." (Emphasis added). That same Code Comment excludes from No

Fault or Negligence consideration a situation of "sabotage of the Athlete's food or drink by a spouse, coach, or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink)."

10.5.2 No Significance Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. . . . . When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's sample in violation of Article 2.1 . . . , the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

10.5.5 Where an Athlete or Other Person Establishes Entitlement to Reduction in Sanction Under More than One Provision of this Article.

Before applying any reduction or suspension under Articles 10.5.2, 10.5.3, or 10.5.4, the otherwise applicable period of Ineligibility shall be determined in accordance with Articles 10.2, 10.3, 10.4 and 10.6. If the Athlete or Other Person establishes entitlement to a reduction or suspension of the period of Ineligibility under two or more of Articles 10.5.2, 10.5.3 or 10.5.4, then the period of Ineligibility may be reduced or suspended, but not below one-fourth of the otherwise applicable period of Ineligibility.

10.9 Commencement of Ineligibility

Except as otherwise provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.

10.9.3 If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.

10.9.5 No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of

whether the Athlete elected not to compete or was suspended by his or her team.

4.6 The 2009 Prohibited List from WADA designates anabolic androgenic steroids as Prohibited Substances. [7]

4.7 The IAAF Anti-Doping Regulations ("ADR") (2009 Edition) were effective January 1, 2009, and, as noted earlier, are similar to the WADA provisions. See IAAF ADR 32. ADR 33, Proof of Doping, is almost identical to the WADA Code.[8]

4.8 IAAF ADR 38.15 provides that:

> All decisions taken under these Anti-Doping ADRs regarding exceptional/special circumstances must be harmonised so that the same legal conditions can be guaranteed for all Athletes, regardless of their nationality, domicile, level or experience. Consequently, considering the question of exceptional/special circumstances, the following principles shall be applied:
>
> > (a) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body tissues or fluids. Athletes are warned that they shall be held responsible for any Prohibited Substance found to be present in their bodies (see ADR 32.2(a) (i) above).
> >
> > (b) exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in a vast majority of cases.

4.9 IAAF ADR 38.17 provides that:

> If an Athlete seeks to establish that there are exceptional /special circumstances in this case, the relevant tribunal shall consider, based on the evidence presented, and with strict regard to the principles set out in Rule 38.15 above, whether, in its view, the circumstances in the Athlete's case may be exceptional/special. . . .

4.10 The IAAF ADRs applicable to Anti-Doping violations that occurred in connection with a competition require the forfeiture of all titles, awards, medals, points and prize and appearance money except in special circumstances. IAAF ADR 40.1.

4.11 IAAF ADR 40.2 requires two years of Ineligibility for a first violation of the Anti-Doping Rules. This athlete bears the burden of proof in order for there to be any reduction in the period of ineligibility.

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[7] The 2009 Prohibited List, WADA Code (2009).

[8] The Respondent identified the World Masters Athletics ("WMA") Anti-Doping Rules as Exhibit 1 to his Pre-Hearing Brief. The parties have stipulated that the IAAF ADR apply. See Stipulation, at ¶2. In any case, the WMA Anti-Doping Rules state that they are "IAAF based" and are nearly identical to the IAAF ADR in all material respects. The No Fault or Negligence and No Significant Fault or Negligence provisions in the WMA Anti-Doping Rules can be found at paragraphs 40.2 (b) and 40.3(e), respectively.

4.12 IAAF ADR 40.5 sets forth the requirements for the elimination or reduction of Ineligibility periods based on exceptional circumstances. Under IAAF ADR 40.5(a):

> If an Athlete or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of 32.2(a) (Presence of a Prohibited Substance), the Athlete must establish how the Prohibited Substance entered his system in order to have his period of Ineligibility eliminated.

4.13 IAAF ADR 40.10 specifies the commencement period of Ineligibility. If a provisional suspension has been imposed and respected then the Athlete receives credit for such period of provisional suspension.

5.0 PROCEDURAL ASPECTS OF CASE.

5.1 A telephonic probable cause hearing (the "Provisional Hearing") was held on December 10, 2009. Although they received timely proper notice, neither the Athlete nor his Counsel appeared. At the conclusion of the Provisional Hearing, the Panel upheld USADA's decision to impose a Provisional Suspension against the Respondent. The Provisional Suspension made the Athlete ineligible to participate in any competition or event, or, for membership or inclusion upon any team organized or nominated by the USOC or any NGB. The Provisional Suspension went into effect December 11, 2009.

5.2 On January 7, 2010, USADA notified Respondent's counsel by phone that due to equipment issues, the Helsinki Laboratory would be unable to analyze Respondent's B sample within an acceptable time frame to satisfy Respondent's request for an expedited hearing and that it was therefore necessary to move both the A and B samples to the Cologne Laboratory for analysis. At that time, Respondent's counsel informed USADA that Respondent would not be attending the B sample analysis in Cologne.

5.3 A preliminary hearing was conducted telephonically on January 7, 2010. On that call the parties informed the Panel of the sample transfer, that Respondent would not be attending the B analysis, and the parties and the Panel agreed to the evidentiary hearing date and dates upon which certain pre-hearing matters would be addressed.

5.4 The full Hearing was thereafter scheduled for February 25 and February 26, 2010.

5.5 The Parties entered into the stipulations as noted in Section 2 above.

5.6 A Scheduling Order was provided by the parties and agreed to by the Panel.

5.7 Since it was conclusively established that the Respondent committed an anti-doping rule violation pursuant to IAAF ADR 32.2(a) (Presence of a Prohibited

Substance or its Metabolites or Markers in an Athlete's Sample), the only remaining contested issue for this Hearing is the period of ineligibility, if any, that should be imposed on the Respondent.

6. HEARING

6.1 The Hearing was held on February 25, 2010.

6.2 The following individuals testified at the Hearing at the request of Respondent:

A. Kenrick Smith, Respondent's Coach, testified that he had been coaching for over 20 years. He has known the Respondent since he was 12 years old. He was in charge of all aspects of the Respondent's training. He established his training program and advised him regarding his diet. He stated that the Respondent is getting older and his timing is slower. He stated that the Respondent was getting tired and thus Mr. Smith changed his training regime in 2008. Those changes did not work, so Mr. Smith changed it again in 2009. Mr. Smith believes that athletes need massages. The Respondent had some health issues so Mr. Smith encouraged him to see a doctor. Mr. Smith testified that he opposes doping and believes in fair play. He testified that he did not believe that the Respondent engaged in doping. Mr. Smith stated that he has not gone to the WADA web site to learn which substances are banned and had not encouraged his athletes to take that precaution.

B. Ben James, a friend and fellow World Masters participant testified that he was at the World Masters in Finland and accompanied the Respondent to the area at the competition where they could get a massage. These massages were offered to the athletes for a fee. Mr. James did not see any substance given by the massage therapist to the Respondent.

C. Ken Thomas, also a friend and World Master ("WM") athlete, received a massage and afterwards was given a beverage which he stated, "Looked and tasted like water." He did not see the Respondent in the massage area.

D. The Respondent testified at length about his commitment to running and the importance of his participation at the WM competitions. He was a former Olympian from his home country of Guyana, but participates as a U.S.A. team member in IAAF events and at the World Masters. He denied taking any prohibited substances and contended that he was the victim of an elaborate sabotage scheme perpetrated by unknown persons. The Respondent had not checked the ingredients on any of the several supplements that he had admittedly taken. He testified that he had no knowledge of the 2009 WADA Prohibited List, the IAAF Anti-Doping Regulations, or the World Masters Anti-Doping Rules. He testified that he considered his medical information confidential and has not pursued any TUE. The Respondent testified that he participated in the World Masters for his own personal enjoyment and expressed dismay that doping controls were mandated at these events since the athletes had to pay their own expenses to attend. He testified that the statement in the WADA Code advising an athlete that he or she is responsible

for what goes in their body does not "belong due to the type of meet" that it is. The Respondent felt that he had been targeted to be tested at the meet due to his race. He also complained about the doping control officers.

6.3 Dr. Larry Bowers, the Chief Science Officer for USADA, testified at the Hearing at the request of USADA. He explained the analysis of the urine sample. He testified that the results were consistent with an injection or repeated or multiple oral ingestion of androstendione. It is a testosterone prohormone and was definitely not a trace contamination. Dr. Bowers testified about the effects from taking the prohibited substances.

6.4 All exhibits filed with the parties' Pre-Hearing Briefs were admitted into evidence, along with additional exhibits presented at the Hearing. The parties made opening statements and closing arguments and responded to the questions of the Panel.

6.5 The Panel found the testimony of the witnesses informative and thanked them for their participation in the Hearing.

6.6 The Respondent claimed that the cause of his positive test was either sabotage by an unknown third party or that he was doped without his knowledge by a massage therapist, whom he claimed to be a medical staff person, at the World Championships. He argued for a reduction under IAAF ADR 40.5(a), which permits elimination of any period of ineligibility if, among other things, he established that he bore "no fault or negligence" for his rule violation. Alternatively, he sought a reduction under IAAF ADR 40.5(b), which permits a maximum reduction of up to one-half the otherwise applicable period of ineligibility if, among other things, he could establish that he bore "no significant fault or negligence" for his rule violation. Further, the Respondent argued that should this Panel decide that he is not without fault, he bore No Significant Fault or Negligence under IAAF ADR 40.5(b). That contention is based on the Respondent's theory that a drink he was given by the massage therapist (allegedly part of the medical staff) at the World Championships as treatment for feeling "tight" is the source of his positive test.[9]

6.7 USADA argued that the Respondent did not meet his burden of proof as required under the WADA Code and the IAAF Rules. In addition, USADA argued that under the circumstances presented at the Hearing, a lengthier period of ineligibility was warranted based on the presence of "aggravating circumstances" which would justify the imposition of a period of ineligibility greater than the standard sanction. IAAF ADR 40.6.

6.8 The Respondent advised the panel of an impending athletic event. Therefore, an Interim Award was issued on February 26, 2010, imposing disciplinary sanctions of the Respondent. The parties were advised that the Final Award would follow.

6.9 The Panel commends counsel for both parties for their presentations.

[9] In his Pre-hearing Brief, the Respondent alleged that this treatment was due to a "nagging" injury.

7. FINDINGS

7.1 The Respondent is an experienced athlete, who has competed nationally and internationally for many years. Because of that experience he knew or should have known that the WADA Code places responsibility for every substance that enters an athlete's body squarely upon the shoulders of that athlete. The principle that an athlete is responsible for what enters his or her body is not a new principle; it was part of sport anti-doping rules long before adoption of the Code. *See, e.g., Aanes v. FILA*, (CAS 2001/A/317). Without adherence to this principle the anti-doping system is not fair and equitable for every athlete, including those that participate at the World Masters level.

Under either exceptional circumstances provision (no fault *or* no significant fault), the burden of proof is on the Respondent to first satisfy the threshold requirement to "demonstrate how the Prohibited Substance entered his body in order to have the period of Ineligibility reduced." IAAF ADR 38.17, see also IAAF ADR 40.5(a) and 40.5(b). Only if the Respondent carries his burden on this threshold issue may he seek to establish that he bears no fault or negligence (IAAF ADR 40.5(a)) or no significant fault or negligence (IAAF ADR 40.5(b)) for the positive test. The Respondent carries the burden of production and proof on each of these points.

The necessity of proving "how the substance got there" as a precondition to qualify for any reduction in sanction flows naturally from the principle of the athlete's responsibility for what goes into his or her body. If an athlete cannot prove *how* a banned substance got into his body, he cannot exclude the possibilities of intentional or significantly negligent use. The Code is clear that an athlete must completely exclude these possibilities in order to be entitled to a reduction in sanction. See IAAF ADR 38.17, 40.5(a), 40.5(b).

7.2 The exceptional circumstances rule was "meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases." Comments to Code § 10.5.2 (emphasis added); *Hipperdinger v. ATP Tour* (CAS 2005/A/690); *Torri Edwards and IAAF* (CAS OG 04/003); *Kicker Vencill and USADA* (CAS 2003/A/484); and *USADA v. Faruk Sahin* (AAA 30 190 01080 04). To conclude otherwise would permit the exceptional circumstances rule to undermine the consistent and uniform application of anti-doping rules to similarly situated athletes around the world. Exceptions to the presumptive periods of ineligibility set forth in the Code are permitted if the athlete carries his burden of proving all elements of an exceptional circumstances claim. However, it is uniformly accepted that exceptional circumstances are rare and that the bar for justifying a reduction in sanction is set high. In fact, IAAF ADR 38.15(c) specifically provides that an allegation that someone else gave a prohibited substance to the athlete without the athlete's knowledge is typically *insufficient* to justify a sanction reduction.

7.3 Under the Code, and pursuant to the principles articulated by the Court of Arbitration for Sport ("CAS") through decades of doping adjudications, no amount of denials and good character evidence by themselves can mitigate the force of scientific proof of a banned drug in the athlete's system. As CAS panels have frequently said, "the currency of [a] denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent." *Meca-Medina v. FINA, Majcen v. FINA*, (CAS 99/A/234 &

CAS 99/A/235), ¶ 10.17. Therefore, as required by IAAF ADR 38.17, 40.5(a) and 40.5(b), with but one exception,[10] proof of how the banned substance came to be in the athlete's body (not appeals to sympathy, complaints about opportunities lost, protestations of innocence or musings about whether others had a motive to sabotage the athlete) *must* be the starting point for any effort to seek reduction of a period of ineligibility for a doping violation. *See, e.g., USADA v. Gatlin*, AAA No. 30 190 00170 07, ¶ 8.11 (2007) ("while Mr. Gatlin seems like a complete gentleman, and was genuinely and deeply upset during his testimony, the Panel cannot eliminate the possibility that Mr. Gatlin intentionally took testosterone, or accepted it from a coach, even though he testified to the contrary. Thus, by failing to prove how testosterone entered his system . . . Mr. Gatlin has failed to sustain his burden of proof to show that he had either No Fault or Negligence or No Significant Fault or Negligence.")

In *IAAF v. Chouki*, the athlete advanced a sabotage theory, claiming that he was injected with EPO against his will by medical staff at a race. *See* CAS 2004/A/633, at ¶8.10. The panel pointed out that "the burden of adducing exculpatory circumstances is shifted to Mr. Fouad Chouki, who had to establish that the administration of the prohibited substance had occurred against his will." *Id.* at ¶8.9. However, the panel concluded that Chouki's argument failed. The panel noted that in order to accept the athlete's sabotage theory, the panel "based on objective criteria, must be convinced of the occurrence of such an alleged fact." *Id.* at ¶8.14.4. After a review of all of the evidence, the panel found the evidence inadequate to convince it of how the EPO entered Mr. Chouki's system by a balance of probabilities. Likewise, the Panel here rejects the Respondent's sabotage theory.

7.4 Here, the Respondent failed to establish any "exceptional circumstances" that would entitle him to a reduction in sanctions since he admitted that he did not check the ingredients on the supplements that he took, that he had not read the IAAF ADRs, and that he did not take responsibility for what went into his body, exclaiming that the statement regarding responsibility for what goes in an athlete's body does not belong due to the type of meet he was participating in at the World Masters. Instead, he called that requirement an "insult" since athletes participate in the events "to have fun." [11] The Respondent did not meet his burden of proof. He failed to prove how the banned substance got into his system, a precondition to qualify for any reduction in sanctions. His argument is similar to the failed sabotage argument in *Chouki* as "it is simply not credible that the administration" of this testosterone prohormone took place against his will. *Id.* at ¶¶8.14.5, 8.14.7 -.9. The Panel finds the evidence insufficient to convince it of how the banned substance entered the Respondent's system to the comfortable satisfaction of the Panel. Further, the Respondent did not establish that he was without significant fault in ingesting a prohibited steroid.

7.5 USADA did not meet its burden of proving that there were "aggravating circumstances" present under the evidence which would justify the imposition of a period of ineligibility greater than the standard sanction. IAAF ADR 40.6. USADA was required to bear the burden of proof with legal sufficiency that the Respondent used or possessed multiple prohibited substances or used prohibited substances on multiple

[10] The one exception, not relevant in this case, is a sanction reduction for substantial assistance to anti-doping authorities.

[11] The Respondent's complaints about the actions of the doping control officers are without merit.

occasions or engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. *See* Comment to Code Art. 10.6.

8. AWARD

8.1 The Respondent has committed a doping violation under the WADA Code, Article 10. 2, by reason of the use of the testosterone prohormone.

8.2 Regardless of an athlete's age, all are entitled to compete on a level playing field at all events, including Masters level events. Cheating and doping have no place in sports.

8.3 The two-year suspension, which began on December 11, 2009, the effective date of the provisional suspension, is affirmed.

8.4 The Respondent is held to forfeit his medals from the 2009 World Masters' events. IAAF ADR 40.1.

8.5 The Interim Order is herein incorporated by reference except that the administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitration shall be borne by USOC.

8.6 This Award is in full and final settlement for all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are denied.

Carolyn B. Witherspoon, Chair of Panel

Walter G. Gans, Panel Member

Deanna Reiss, Panel Member

Carolyn B. Witherspoon, Chair of Panel

Walter G. Gans, Panel Member

Deanna Reiss, Panel Member