



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy

AWARD

delivered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden

Arbitrators: Professor Massimo Coccia, Law Professor and Attorney-at-law in Rome, Italy

Ms. Blondel Thompson, Barrister-at-law in Birmingham, England

in the arbitration between

WORLD ANTI-DOPING AGENCY, Montreal, Canada

Represented by Mr. Olivier Niggli and Mr. Yvan Henzer, Carrard & Associés Lausanne, Switzerland

- Appellant -

and

**INTERNATIONAL WATERSKI AND WAKEBOARD FEDERATION (IWWF),
Unteraeegeri, Switzerland**

Represented by Mr. Jeffrey D. Smith, Varnum, Attorney at Law, Michigan, USA

- First Respondent -

&

AARON C. RATHY, Florida, United States of America

- The Athlete/Second Respondent -

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 2

1. THE PARTIES

- 1.1 The World Anti-Doping Agency (“the Appellant” or “WADA”) is a Swiss private law Foundation. Its seat is in Lausanne Switzerland, and its headquarters are in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
- 1.2 The First Respondent, the International Waterski and Wakeboard Federation (IWWF), is the governing body for waterski and wakeboard. The head office of IWWF is in Switzerland.
- 1.3 Mr Aaron C. Rathy (the “Athlete” or “Second Respondent”) is an international-level wakeboarder affiliated with the Canadian Federation “Waterski and Wakeboard Canada”, which is the governing body for waterski and wakeboard in Canada and a member of IWWF.

2. FACTUAL BACKGROUND

- 2.1 While competing in the XVI Pan American Games in Guadalajara in 2011 (“the Competition”) on 22 October the Athlete provided a urine sample during an in-competition test. The Athlete tested positive for methylhexanamine.
- 2.2 Methylhexanamine is a prohibited substance under the 2011 WADA Prohibited List classified S6 (b), Specified Stimulants.
- 2.3 On 29 December 2011, the IWWF Anti-Doping Hearing Panel forwarded to WADA a non-dated decision imposing a reprimand on the Athlete. The results of the Athlete at the Competition had been disqualified already in the Competition.
- 2.4 It is this decision that is the subject of this appeal.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 3

- 3.2 On 19 January 2012, WADA filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") requesting as follows:
1. The Appeal is admissible.
 2. The decision by the IWWF Doping Panel is set aside.
 3. The Athlete is sanctioned with a period of ineligibility to be set between 12 and 24 months, starting on the date on which the CAS award enters into force and that any ineligibility period shall be credited against the total period of ineligibility to be served.
 4. All competitive results obtained by the Athlete from 21 October 2011 through the commencement of the applicable period of ineligibility shall be annulled.
 5. WADA is granted an award for costs.
- 3.3 On 13 February 2012, WADA filed his Appeal Brief and Exhibits with the CAS.
- 3.4 On 2 March 2012, the IWWF submitted its Answer Brief. The IWWF made the request that CAS A. review and determine that IWWF followed the appropriate procedures in this matter; B. Determine whether any further period of ineligibility should be imposed on the Athlete in accordance with the applicable rules of Appeal Arbitration Procedure; and C. that no costs be awarded in this matter.
- 3.5 The Athlete was in contact with the CAS and was granted extra time for his answer but he never filed any brief or submissions at all.
- 3.6 On 22 June 2012 WADA filed its Supplementary Brief with observations on the IWWF's Answer.
- 3.7 In a letter on 25 June the Athlete was granted seven days to file a final submission. He did not file a brief within said time.
- 3.8 On 3 July 2012 the IWWF filed its Supplemental Response Brief.
- 3.9 Since none of the parties had requested the holding of a hearing the CAS Panel decided in accordance with Article R57 of the Code of Sports-related Arbitration ("the Code"), to issue an award on the basis on the parties' written submissions and to replace the holding of a hearing by final observations. On 11 July the Panel sent an Order of Procedure to the Parties. By signature of the Order the parties confirmed that they accepted that the Panel may decide on the matter on basis of the parties' written submissions. WADA and IWWF signed the Order of Procedure.
- 3.10 On 6 July 2012 the Athlete sent an e-mail in which he informed the CAS that he had been on the road for the past six weeks.
- 3.11 On 18 July 2012 the Athlete – with approval by WADA – was granted an additional time limit of 15 days to file a final submission. The Athlete failed to file any submission.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 4

4. THE CONSTITUTION OF THE PANEL

- 4.1 By letter dated 11 April 2012, the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden; Professor Massimo Coccia, Professor of Law and Attorney-at-law in Rome, Italy as Arbitrator appointed by the Appellant and Ms. Blondel Thompson, Barrister-at-law in Birmingham, England appointed on behalf of the Respondents. The parties did not raise any objection as to the constitution and composition of the Panel.

5. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

- 5.1 In summary, the Appellant submits the following in support of its appeal.

5.2 Applicable rules

- 5.2.1 The positive test occurred on the occasion of the Pan American Games 2011 in Guadalajara, which is an international event organized by the Pan American Sports Association ("PASO"). PASO is a signatory of the World Anti-Doping Code ("WADC") and is a major event organization in the sense of the definition provided by WADC.

- 5.2.2 The WADC was applicable for the Competition.

- 5.2.3 Pursuant to Art. 15.3.1 of WADC, the result management was referred to the IWWF which was the competent authority to take a sanction beyond disqualification from the Competition.

5.3 Admissibility of the Appeal

WADA's Right of Appeal

- 5.3.1 According to Art. 13.2.1 of the IWWF Anti-Doping Rules ("ADR"): *"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court."*
- 5.3.2 At Art. 13.2.3 (f) IWWF ADR, WADA is explicitly listed as one of the entities with a right of appeal under Art. 13.2.1 IWWF ADR.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 5

5.3.3 WADA therefore has a right of appeal to CAS under 13.2.1 of the IWWF ADR.
Compliance with the deadline to appeal

5.3.4 Art. 13.6 IWWF ADR states inter alia that *"the filing deadline for an appeal or intervention filed by WADA shall be the later of:*

(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."

5.3.5 The Statement of Appeal filed by WADA on 19 January 2012 was lodged within the time limit set forth under the IWWF ADR.

5.3.6 WADA also complied with the provisions of Art. R48 of the CAS Code of Sports-related Arbitration (the "Code") and paid the Court office fee as per Article R65.2.

5.3.7 The Appeal Brief was sent on 13 February 2012 and therefore filed within the 10-day deadline fixed by CAS in its letter dated 2 February 2012.

5.3.8 The appeal by WADA is therefore admissible.

5.4 Anti-Doping Rules Violation

5.4.1 Art. 4.1 of the IWWF ADR states that *"these Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Art. 4.1 of the Code."*

5.4.2 Methylhexanamine, which appears on the WADA 2011 Prohibited List under class S.6. Stimulants, is prohibited in-competition and is defined as a Specified Substance in the WADA 2011 Prohibited List.

5.4.3 The presence of methylhexanamine was detected in the bodily sample provided by the Athlete.

5.4.4 The Athlete did not contest the presence of the prohibited substances in his bodily samples and waived his right to have the B-sample analyzed.

5.4.5 Therefore, the violation by the Athlete of Art. 2.1 of the IWWF ADR (*presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen*) is established.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 6

5.5 Determining the Sanction

General

5.5.1 Pursuant to article 10.5 of IWWF ADR, an athlete can establish that, in view of the exceptional circumstances of his individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1) or reduced (in case of no significant fault or negligence as per article 10.5.2).

5.5.2 With respect to Specified Substances, Article 10.4 of the IWWF ADR further states:

"Where an Athlete or other Person can establish how a 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 from future Events, and at a maximum, two (2) years of Ineligibility. [...]"

5.5.3 As a preliminary matter, it is worth recalling that Art. 10.5.1 (no fault) is not relevant to these proceedings. The Athlete has not appealed against the Appealed Decision, which imposed a reprimand. In any event it will be demonstrated below that the Athlete clearly bears fault.

Origin of the prohibited substance in the athlete's bodily specimen

5.5.4 In order to have the period of ineligibility eliminated or reduced under Art. 10.4 or reduced under Art. 10.5.2 of the IWWF ADR, the Athlete must first establish how the prohibited substance entered his system.

5.5.5 In that respect, the standard of proof imposed upon the athlete pursuant to art. 3.1 of the IWWF ADR is the balance of probability.

5.5.6 Pursuant to CAS precedents (CAS 2008/A/1515, WADA v. Swiss Olympic & Daubney) *"the balance of probability standard entails that the athlete has the burden of persuading the Panel that the occurrence of circumstances on which the athlete relies is more probable than their non-occurrence or more probable than other possible explanations of the positive test"*.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy ~ p. 7

- 5.5.7 In the case at hand, the Athlete explained that he had undergone a knee surgery some time before the Competition and was seeking to lose some weight to reduce the physical stress on his knee. In that context, he purchased a product known as "OxyElite Pro".
- 5.5.8 After a quick research on the website dedicated to this product (www.oxyelitepro.com), it appears that one of its ingredient is 1,3-Dimethylamylamine. As expressly stated on the website of the manufacturer, 1,3-Dimethylamylamine is "*also known as DMAA or methylhexanamine*".
- 5.5.9 In view of the information available at this stage of the procedure, WADA is ready to accept that the Athlete tested positive for methylhexanamine after having ingested the product "OxyElite Pro", since one of its compounds is indeed the detected prohibited substance.

Fault of the Athlete

- 5.5.10 The applicability of article 10.4 IWWF ADR is not challenged as the Athlete did not intend to enhance his performances or mask the use of a performance-enhancing substance by ingesting the dietary supplement known as "OxyElite Pro", which contains a specified substance. Therefore, the only issue is to determine a proper sanction, which reflects the fault of the Athlete.
- 5.5.11 The cornerstone of the anti-doping legal system is the personal responsibility of the athlete for what he ingests. This fundamental principle is implemented in article 2.1.1 IWWF ADR, which states as follows:

"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 [= presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample]".

- 5.5.12 In FIFA & WADA, CAS 2005/C/976 & 986, the panel offered the following opinion at paras. 73 and 74:

The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. Case law of CAS and of other sanctioning bodies has confirmed these duties, and identified a number of obligations which an athlete has to observe, e.g., to be aware of the actual list of prohibited substances, to closely follow the guidelines and instructions with respect to health care and nutrition of the national and international sports federations, the NOC's and the national anti-doping organisation, not

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 8

to take any drugs, not to take any medication or nutritional supplements without consulting with a competent medical professional, not to accept any medication or even food from unreliable sources (including on-line orders by internet) [...]. The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition... It is this standard of utmost care against which the behavior of an athlete is measured if an anti-doping violation has been identified. "No fault" means that the athlete has fully complied with the duty of care.

5.5.13 A sanction may be reduced for no significant fault or negligence, but only when the circumstances are *"truly exceptional and not in the vast majority of cases"* (see comments to articles 10.5.1 and 10.5.2 IWWF ADR).

5.5.14 It is submitted that the analysis of relative fault under art. 10.4 IWWF ADR is the same as under art. 10.5 IWWF ADR, and is made by reference to the degree to which the Athlete has departed from the standards of behavior expected from him (CAS 2011/A/2518 Robert Kendrick v. ITF, para. 10.16).

5.5.15 Thus, the comment to Article 10.4 provided for in the WADC explains:

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under the Article.

5.5.16 Generally speaking, if an athlete ingests a product failing to inquire or ascertain whether the product contains a prohibited substance, such athlete's conduct constitutes a significant fault or negligence, which excludes any reduction of the applicable period of ineligibility (see e.g. CAS OG 04/003 Edwards v/ IAAF and USATF, para. 5.11 *et seq.*; CAS 2005/A/847 Knauss v/ FIS, para. 7.3.6; CAS 2006/A/1032 Karantacheva v/ ITF, para. 146 *et seq.*; CAS 2006/A/1067 Keyter v/ IRB para. 6.13 *et seq.*).

5.5.17 In the Prieto case, the Panel considered that the athlete could not pretend to a reduction of the sanction for "no significant fault or negligence" because she *"did not apply the standard of care to be expected of a top-level athlete, i.e. obtain assurances from her physician, pharmacist or team doctor that supplements did not contain a prohibited substance"* (CAS 2007/A/1284 & CAS 2007/A/1308 – WADA v/FECNA & Lina Maria Prieto, para. 118). A similar consideration was made by the Panel in the Despres case (CAS 2008/A/1510 WADA v/ Despres, CCES & Bobsleigh, para. 7.9 a)

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 9

5.5.18 Regarding nutritional supplements, CAS has always been reluctant to accept a no significant fault or negligence in view of the numerous warnings of the well-known risks linked to the use of such substance (see CAS 2003/A/484 Vencill v/ USADA; CAS 2005/A/847 Knauss v/ FIS; CAS 2008/A/1629 WADA v/ Malta Football Association & Claude Mattocks; CAS 2008/A/1510 WADA v/ Despres, CCES & Bobsleigh; CAS 2007/A/1445 WADA v/ Qatar Football Association & Ali Jumah A.A. Al-Mohadanni; CAS 2009/A/1915 WADA v/ PWF, Blonski & Zieziulewicz).

5.5.19 In the case at hand, the Athlete did not obtain any assurance from a specialist, such as a physician or a team doctor, that the product he purchased did not contain any prohibited substance. The questions he allegedly asked to the store salesman are evidently not sufficient to comply with the standard of care to be expected from an international-level athlete. A salesman is indeed not qualified to determine whether or not a dietary supplement is safe for an international-level athlete bound by the duty to keep his organism clean from any banned substance.

5.5.20 The Athlete claimed to have made some internet researches in connection with the product he purchased. These inquiries were inadequate. A very basic research on the internet would have told him that the fat burner he purchased did contain a prohibited specified substance. The official website of this product even expresses an explicit warning in those terms:

"Note that some organizations, such as WADA, test for this compound [i.e. methylhexanamine] and ban it, so check your drug testing sponsor if you are getting tested".

5.5.21 In consideration of the above, it is evident that the Athlete departed from his duty of care. Should he have taken any basic precautions, by consulting a doctor or simply by reading the official website of the dietary supplement manufacturer, he would have realized that the product contains a prohibited substance.

5.5.22 The circumstances of this case are rather similar with the Berrios case (CAS 2010/A/2229 WADA vs. FIVE & Gregory Berrios). Mr. Berrios was a volley-ball player who also purchased a tainted dietary supplement over the counter in order to lose some weight after a period of inactivity due to knee injury. He was sanctioned by CAS with a 12-month period of ineligibility. However, contrary to the case at hand, the label of the supplement that Mr. Berrios took did not mention the presence of a prohibited substance. Moreover, Mr. Berrios was not warned by the website of the manufacturer that the supplement contained a prohibited substance.

5.5.23 The Athlete was very negligent (more than Mr. Berrios who was misguided by a mislabeled product) and his fault is significant. The only mitigating factor is that the

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 10

Athlete, by purchasing a dietary supplement, did not intend to enhance his performance but rather reduce his weight. In that context, WADA amended its relief claimed and submitted that a ban between 12 and 18 months would be appropriate.

B. The IWWF's Submissions

5.6 In summary, the IWWF submits the following in defense:

Facts

5.6.1 All facts presented by WADA according to the Competition, the testing, the analysis of the samples and the classification of the prohibited substances are correct.

Jurisdiction

5.6.2 IWWF agrees that this matter is properly before CAS pursuant to a timely appeal filed by WADA.

5.6.3 Although IWWF is an "interested party" in this appeal proceeding under the IWWF Rules, *see IWWF Rule 13.2.3*, IWWF's interest-in-fact in this matter is limited to application of the IWWF Rules and the procedures followed by IWWF's Doping Hearing Panel in deciding the underlying proceeding.

5.6.4 Any determination on the merits of WADA's appeal of the Decision of IWWF Doping Hearing Panel is a matter between WADA and Mr. Rathy, as to which Mr. Rathy should independently file a response.

Analysis of the Issues

5.6.5 Based on the evidence presented to it, specifically including Mr. Rathy's acknowledgment of his violation of the IWWF Rules, the IWWF Hearing Panel found that Mr. Rathy was in violation of IWWF Rule 2.1 (the presence of a Prohibited Substance in an athlete's sample).

5.6.6 The violation was for a "Specified Substance" under WADA's 2011 Prohibited List.

5.6.7 IWWF Rule 10.2 presumptively mandates the imposition of a two (2) year period of ineligibility.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 11

5.6.8 However, IWWF Rule 10.4 allows for the elimination or reduction of this period of ineligibility in cases involving Specified Substances (as opposed to other Prohibited Substances as set forth in WADA's 2011 Prohibited List):

IWWF Rule 10.4 states:

Where an Athlete ... can establish how a Specified Substance entered his or her body ... and that such Specified Substance was not intended to enhance the Athlete's sport performance ... , 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 from future events, and at a maximum, two (2) years of Ineligibility...

5.6.9 Thus, an athlete seeking the elimination or reduction of the presumptive two (2) year period of ineligibility under IWWF Rule 10.4 must present evidence establishing each of the following to the comfortable satisfaction of the hearing panel:

A. Establishing how the Specified Substance entered his body; and,

B. The Specified Substance was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance.

5.6.10 It is not contested that Mr. Rathy provided evidence establishing each of these criteria under IWWF Rule 10.4 and it was thus appropriate for the IWWF Hearing Panel to consider whether the presumptive two (2) year period of ineligibility should be eliminated or reduced in Mr. Rathy's case. See CAS 2011/A/2645 Union Cycliste Internationale (UCI) v/ Alexander Kolobnev & Russian Federation, paras. 69 – 83.

5.6.11 WADA and IWWF thus agree that IWWF Rule 10.4 was the basis for the decision made by the IWWF Hearing Panel in imposing a reprimand in Mr. Rathy's case. See CAS 2008/A/1488 P. v/ International Tennis Federation, paras. 22 – 23.

5.6.12 As noted above, the IWWF Doping Hearing Panel determined that Mr. Rathy should not receive any additional period of ineligibility as a result of the violation, and should be reprimanded, in addition to the disqualification of Mr. Rathy's individual results in the Competition and the forfeiture of his silver medal.

5.6.13 As the basis of its appeal, WADA argues that the IWWF Hearing Panel's decision exceeded the appropriate scope of the discretion set forth in IWWF Rule 10.4. Specifically, WADA argues that Mr. Rathy was "at fault" with respect to the violation, and that the IWWF Hearing Panel's issuance of a reprimand was therefore improper.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 12

5.6.14 As set forth above, IWWF takes no position as to the underlying merits of the claims and defenses specifically alleged in this case *vis-à-vis* Mr. Rathy's conduct. Although the IWWF Case Decision recites the evidence presented to the IWWF Hearing Panel in Mr. Rathy's case, Mr. Rathy should present such evidence in response to this Appeal as he deems relevant and appropriate. In making this determination, IWWF believes the Panel should consider the analysis set forth in CAS 2011/A/2645 Union Cycliste Internationale (UCI) v/. Alexander Kolobnev & Russian Federation, paras. 84 – 95
Standard of Review on Appeal/Costs

5.6.15 Under Article 57 of the Code of Sports-related Arbitration, the Panel shall have full power to review the facts and the law. The Panel may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

5.6.16 In reviewing the IWWF Hearing Panel's Case Decision, the analysis set forth in CAS 2011/A/2645 Union Cycliste Internationale (UCI) v/ Alexander Kolobnev & Russian Federation, para. 94 is instructive (*"the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence"*). See also, CAS 2006/A/1175 D. v/ International Dance Sport Federation, paras. 47 – 49.

5.6.17 Under Article R65.1 of the CAS Code, disciplinary cases of an international nature shall be free of charge, except for the Court Office fee to be paid by the appellant and retained by the CAS. Further, IWWF does not have a direct stake in the outcome of this matter, and has very limited financial resources, and an award of expenses and costs against IWWF would be inappropriate and improper.

C. WADA's SUPPLEMENTARY BRIEF

5.7 In its Supplementary Brief dated 22 June 2012 WADA makes the following observations on the IWWF's answer.

5.7.1 WADA notes that IWWF accepts CAS jurisdiction, that the appeal is admissible, that IWWF ADR applies in the case, that the facts are not disputed and in particular that the adverse analytical finding is not disputed.

5.7.2 WADA continues that in the context of the application of art. 10.4 IWWF ADR, the IWWF refers to the Kolobnev case (CAS 2011/A/2645 Union Cycliste Internationale (UCI) v/ Alexander Kolobnev & Russian federation). However, this reference is not relevant as WADA accepts that the Athlete did not intend to enhance his sport performance in this particular case.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 13

5.7.3 Furthermore, the case at hand cannot be compared with the Kolobnev case:

- Mr. Rathy tested positive for methylhexanamine (a stimulant), while Mr. Kolobnev tested positive for hydrochlorothiazide (a diuretic);
- Mr. Kolobnev tested positive further to the administration of a medicine (kapilar or naturel capillary protector), within a medical treatment;
- The Kolobnev case was not a supplement case. The risks of using supplement is well known to athletes;

5.7.4 Mr. Rathy's case is comparable with the Berrios case, as already specified by WADA in its Appeal Brief.

5.7.5 In WADA's view, the circumstances adverse to Mr. Rathy are the following:

- He did not take any appropriate measure in order to ascertain that the food supplement he took did not contain a prohibited substance;
- In particular, he did not consult with a doctor before taking his nutritional supplement;
- His alleged inquiries towards the store's salesman are evidently not sufficient to satisfy his duty of care;
- The risks linked with food supplements are well known to athletes;
- The alleged internet researches conducted by Mr. Rathy were inadequate; indeed, the official website of the manufacturer contains an explicit warning.

5.7.6 WADA submits that Mr. Rathy was very negligent. He significantly departed from his duty of care by ingesting a food supplement without precaution.

5.7.7 Under these circumstances, WADA hereby confirms the requests for relief mentioned in its Appeal Brief.

D. IWWF's SUPPLEMENTAL RESPONSE BRIEF

5.8 In its Supplementary Response Brief dated 3 July 2012 IWWF submits the following.

5.8.1 The underlying facts are largely, if not entirely, undisputed. Specifically, it is undisputed that under IWWF Rule 10.4, Mr. Rathy presented evidence to the comfortable satisfaction of the IWWF Doping Hearing Panel sufficient to allow the panel to consider the elimination or reduction of any period of ineligibility otherwise required under the IWWF Rules.

5.8.2 As set forth in IWWF's original Response Brief, IWWF takes no position as to the underlying merits of the claims and defenses specifically alleged in this case *vis-à-vis* Mr. Rathy's conduct. Although the IWWF Case Decision recites the evidence presented to the IWWF Hearing Panel in Mr. Rathy's case, Mr. Rathy should independently present

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 14

such evidence or argument in response to this Appeal as he deems relevant and appropriate.

- 5.8.3 The sole question presented is thus whether the IWWF Doping Hearing Panel acted within the scope of the discretion given to it under IWWF Rule 10.4.
- 5.8.4 IWWF believes the cases cited in its original Response Brief are instructive as to the issues presented in this case. See CAS 2011/A/2645 Union Cycliste Internationale (UCI) V. Alexander Kolobnev & Russian Federation, para. 94 is instructive.
- 5.8.5 The decision of the IWWF Doping Hearing Panel was within the limits of discretion specifically authorized under IWWF Rule 10.4.

LEGAL ANALYSIS

6. JURISDICTION OF THE CAS

- 6.1 Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

- 6.2 Article 13.1 of the IWWF ADR states inter alia the following:

13.1 Decisions Subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules.

- 6.3 Article 13.2.1 of the IWWF ADR states:

13.2.1 Appeals Involving International-Level Athletes

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

- 6.4 In article 13.2.3 it is said that WADA is one of the persons which are entitled to appeal in cases under Article 13.2.1.
- 6.5 It is not contested that the CAS has jurisdiction in this dispute.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 15

- 6.6 According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

7. **ADMISSIBILITY**

- 7.1 In reference to para. 6.3 above Art. 13.2.1 of the IWWF ADR states that in cases arising from competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

- 7.2 Article 13.6 of the IWWF ADR provides that "*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.*"

It is further said in the same article:

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

- (a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
- (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*

- 7.3 WADA has stated that it received the appealed decision on 29 December 2011, which has not been contradicted by the Respondents. WADA filed the Statement of Appeal on 19 January 2012.

- 7.4 It is not contested that the Appeal is admissible.

- 7.5 In light of the above, the Panel finds the Appeal admissible.

8. **APPLICABLE LAW**

- 8.1 Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

Arbitral du Sport
Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 16

common ground between WADA and IWWF that the applicable regulations of this are the IWWF ADR which applies to all members and participants in the activities of the IWWF or of its member federations. Therefore, the IWWF ADR shall apply.

9. **THE PANEL'S FINDINGS ON THE MERITS**

The IWWF Anti-Doping Hearing Panel's Decision recites the evidence presented to the IWWF Anti-Doping Hearing Panel in the case. As the Athlete did not make any submission or presented any evidence in the case before CAS, the Panel accepts the evidence presented before IWWF Anti-Doping Hearing Panel as both WADA and IWWF do.

9.1 Anti-Doping Violation

The Athlete has accepted the results of the A Sample analysis and has waived analysis of the B Sample. According to Article 2.1.2 IWWF ADR, sufficient proof of an anti-doping rule violation under Article 2.1 is established by presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed.

In Article 4.1 of the IWWF ADR it is stated that "*These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code.*"

The presence of the prohibited substance methylhexanamine in the Athlete's bodily samples is therefore established.

9.2 Determining the sanction

9.2.1 According to Art. 10 of the IWWF ADR the following sanctions are applicable.

10.1 Disqualification of Results in Event During which an Anti-Doping Rule Violation Occurs

An Anti-Doping Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

10.1.1 *If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competition shall not be Disqualified unless the Athlete's results in Competition other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.*

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 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided 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.*

- 9.2.2 As a result, the Panel now has to assess whether Art. 10.4 or 10.5 may apply to the present case.

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 a 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 from 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 an 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.

Comment to Article 10.4 provided for in the WADC: *Specified Substances as now defined in Article 4.2.2 are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 10.6. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation.*

This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 18

Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non-sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.

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.

10.5.2 No Significant 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 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. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 19

Athlete's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

Comment to Articles 10.5.1 and 10.5.2 in WADC: The Code provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) 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). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 20

time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2, as well as Articles 10.3.3, 10.4 and 10.5.1.

Article 10.5.2 should not be applied in cases where Articles 10.3.3 or 10.4 apply, as those Articles already take into consideration the Athlete or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.

- 9.2.3 To prevail under Art. 10.4 of the IWWF ADR, the Athlete must first (i) establish how the Specified Substance entered his or her body and then (ii) that such Specified Substance was not intended to enhance the Athlete's sport performance. The Panel shall consider both these requirements.
- 9.2.4 Prior to this analysis, the Panel considers it worth pointing out that it is to be kept in mind that the Anti-Doping Rules adopts the rule of strict liability. From the strict liability principle it follows that, once WADA has established that an anti-doping rule violation has occurred, as in the present case, it is up to the Athlete to demonstrate that the requirements foreseen under Art. 10.4 of the IWWF ADR are met. Such a burden of proof is expressly stated under Art. 3.1 fourth phrase of the IWWF ADR, which provides that: "*where these Rules place 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 provided in Articles 10.4 and 10.6, where the Athlete must satisfy a higher burden of proof*".
- 9.2.5 Concerning Art. 10.4, the Athlete must satisfy a higher burden of proof than the balance of probability. To justify any elimination or reduction, the Athlete must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance.
- 9.2.6 As to the first requirement, i.e. the ingestion of the Prohibited Substance, WADA accepts the explanation from the Athlete – which the IWWF Anti-Doping Hearing Panel also did – that he ingested a named nutritional supplement called "OxyElite Pro", containing methylhexanamine. There is no reason for the Panel not to accept this explanation. This means that the Panel finds that the Athlete has met the burden of proof concerning how the Specified Substance entered his body.
- 9.2.7 With regard to the requirement that such Specified Substance was not intended to enhance the Athlete's sport performance, the Athlete has contended that he used the supplement to reduce weight after a knee operation and that to no extent was it aimed at enhancing his

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 21

sport performance. There are cases where a panel has found that the aim to lose weight indirectly indicates an intention to enhance an athlete's sport performance. However, WADA – and the IWWF Anti-Doping Hearing Panel – have accepted the Athlete's explanation in this case. The Panel finds that WADA's standpoint in the case can be accepted. This means that Art 10.4 can be applied in this case.

9.2.8 The above conclusion means that the Panel has to go on to determine a proper sanction, which reflects the fault of the Athlete. The Comment to Art. 10.4 WADC indicates that, in assessing the Athlete's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's departure from the expected standard of behavior. It is anticipated that the period of ineligibility will be eliminated entirely in only the most exceptional cases.

9.2.9 The Comment to Articles 10.5.1 and 10.5.2 mentions that a sanction could not be completely eliminated on the basis of No Fault or Negligence in the circumstances where a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest under Article 2.1.1 and have been warned against the possibility of supplement contamination). But the Comment adds that depending on the unique facts of a particular case, the referenced illustration could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.) The Panel finds that this means that the IWWF Anti-Doping Hearing Panel was right when it found that the situation is not such that the Athlete has established that he bears No Fault or Negligence. This means also that Art 10.5.1 IWWF ADR can not be applied in this case.

9.2.10 In this case the Athlete relied on a supplement which he had not used before and to the answers which a vendor gave to him. The Athlete testified before the IWWF Anti-Doping Hearing Panel that before purchasing the product he inquired as to whether it included any substances that could result in a positive drug test and the salesperson informed him that it did not.

9.2.11 There is ample CAS case law concerning the standard of behavior required of the Athlete concerning nutritional supplements. There are examples when a CAS Panel has used Art. 10.5.2 to reduce the sanction when the source of the adverse analytical finding has been supplements. See for example CAS 2009/A/1870 WADA v. Hardy & USADA. In the Hardy case the CAS Panel found that the maximum reduction of the two year sanction to twelve months for No Significant Fault or Negligence was appropriate. It was based on a number of concrete steps which the athlete had taken to satisfy her as to the quality of the relevant nutritional supplements. The Athlete had obtained the samples directly from the

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 22

manufacturer and not from an unknown source, used the supplements for 8 months without an adverse finding, obtained an indemnity from the manufacturer with respect to its products and consulted a nutritionist and her coach about the quality products.

9.2.11.1 WADA refers to the Berrios case (CAS 2010/A/2229 WADA vs. FIVE & Gregory Berrios). Mr. Berrios had purchased a tainted dietary supplement over the counter in order to lose some weight after a period of inactivity due to knee injury. He was sanctioned by CAS with a 12-month period of ineligibility. However, contrary to the case at hand, the label of the supplement that Mr. Berrios took did not mention the presence of a prohibited substance. Moreover, Mr. Berrios was not warned by the website of the manufacturer that the supplement contained a prohibited substance.

9.2.11.2 Compared to this case, the Athlete in the present case has been much more careless. He did not himself check the source of OxyElite Pro. As WADA has pointed out, a simple search on the Internet could have revealed to him that it was a great risk to him to use this supplement. There is a specific website dedicated to this product (www.oxyelitepro.com), where it appears that one of the ingredients of OxyElite Pro is 1,3-Dimethylamylamine. As expressly stated on the website of the manufacturer, 1,3-Dimethylamylamine is "*also known as DMAA or methylhexaneamine*".

9.2.12 It is the Panel's view that an athlete, in order to fulfill his or her duty according to Art. 2.1 IWWF ADR, has to be active to ensure that a medication or a supplement that he or she uses does not contain any compound that is on the Prohibited List. In the present case, the Athlete has not done enough to ensure this. The Panel is of the view that the Athlete has not established that he bears No Significant Fault or Negligence. It is therefore no ground to reduce the sanction according to Art. 10.5.2 IWWF ADR.

9.2.13 What now remains is to decide an appropriate sanction according to Art. 10.4 IWWF ADR where a first violation should lead to at a minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two years of ineligibility. The Athlete was very negligent and his fault is significant. The mitigating factor is that the Athlete, by purchasing a dietary supplement, did not intend to enhance his performance but rather reduce his weight.

9.2.13.1 Waterski and wakeboard are small sports with not much money involved. The representative for Waterski and Wakeboard Canada expressed during the hearing before the IWWF Anti-Doping Hearing Panel concern about the need to attract and retain athletes in the sport and as a part of the federation. During the process before IWWF the Athlete expressed regret for what had happened, including the issuance of an apology immediately following his positive test result. During the hearing he was cooperative, honest and frank about the circumstances resulting in the violation. In spite of this, in terms of spirit of fairness and fair play and equal competition between all competitors in a competition it is

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 23

important that all athletes comply with the Anti-Doping Rules. In comparison with the Berrios case the Panel finds that the Athlete in this case exerted less caution. IWWF has referred to the Kolobnev case (CAS 2011/A/2645) in which the Panel expressed that the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence. The sanction in the Barrios case was 12 months of Ineligibility. The Panel finds that the sanctioning by IWWF Anti-Doping Hearing Panel by a sole reprimand is evidently and grossly disproportionate to the offence. In that context, the Panel finds that a period of 15 month of Ineligibility is appropriate in this case.

9.3 What is the starting point of Ineligibility?

- 9.3.1 Pursuant to Art. 10.9 IWWF ADR *"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"*.

According to Art. 10.9.1 *"the IWWF or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred"*.

- 9.3.2 The Athlete in this case has not been co-operative in the CAS proceedings. One of the reasons that this process has been delayed is that the Athlete has been very hard to reach. The panel finds that the period of Ineligibility shall start on 1 August 2012 because fairness so requires.

10 **DISQUALIFICATION OF RESULTS**

- 10.1 Art. 9 of IWWF ADR provides that *"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes"*. Art. 10.8 states *"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes"*.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 24

- 10.2 Based on Art 9 IWWF ADR the Panel hereby confirms the decision of Pan American Sports Organisation (PASO) with respect to the disqualification of the result of the Athlete obtained in the Competition. IWWF Anti-Doping Hearing Panel has not ruled that further results be disqualified. WADA has requested that further results be disqualified. According to Art. 10.8 the Panel finds that all competitive results obtained by the Athlete from 22 October 2011 until the date of this decision shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

11 COSTS

- 11.1 Art. 65.3 of the CAS Code provides that:

"The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion that parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

- 11.2 In the case at hand, the appeal filed by WADA is upheld. As a general rule, the CAS grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The CAS may however depart from that principle under certain circumstances, in particular when such a burden put on the losing party would put its financial situation at stake. Such appears to be the case here; the athlete is a young man who does not appear to be of any great means and the IWWF submitted that it *"does not have a direct stake in the outcome of this matter, and has very limited financial resources, and an award of expenses and costs against IWWF would be inappropriate and improper"*. As a consequence, the Panel takes the view that it is reasonable in the present case to order that each party shall bear its own legal fees and other expenses.

- 11.3 The award is therefore pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss francs) that is retained by the CAS according to Art. R65.2 of the CAS Code.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2012/A/2701 WADA v. IWWF & Aaron Rathy – p. 25

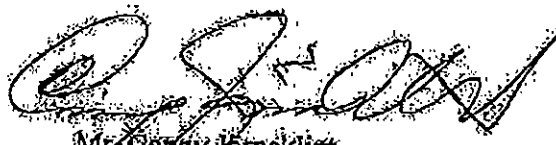
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of WADA is admissible.
2. The decision of the IWWF Anti-Doping Hearing Panel is set aside.
3. Aaron Rathy is sanctioned with a 15 month's period of ineligibility, starting on 1 August 2012. Any period of ineligibility, whether imposed on, or voluntarily accepted by Aaron Rathy before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Aaron Rathy from 22 October 2011 shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
5. This award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) already paid by WADA which is retained by the CAS.
6. Each party shall bear its own legal fees and other expenses.
7. All other prayers for relief are dismissed.

Lausanne, 21 November 2012

THE COURT OF ARBITRATION FOR SPORT



Mr. Corinne Jernekjian
President of the Panel