

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-1780

**Bureau of Commercial Services,
Petitioner**

Agency No. 15-01-4141-00

v

Agency: Bureau of Commercial Services

**Kenny Snow,
Respondent**

Case Type: Sanction

**Issued and entered
this 30th day of November, 2001
by Howard T. Spence
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Hal Ziegler, Attorney at Law, appeared on behalf of the Petitioner, Bureau of Commercial Services. Neither Respondent, Kenny Snow, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint, dated August 9, 2001. The Notice of Hearing was mailed to Respondent's last known address on October 15, 2001. The Notice informed Respondent that failure to appear at a scheduled hearing may result in a default being entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA). The hearing in this matter was held on November 21, 2001. Mr. Ziegler requested that the Petitioner be

allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA, and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by... default... .

The Judge granted the Petitioner's motion for default. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The Formal Complaint discloses that Respondent was licensed as a professional boxer under the Occupational Code, 1980 PA 299, as amended; Article 8; MCL 339.801-814 *et seq.*; MSA 18.425(801)-(814) *et seq.* (the Code).

The Complaint further discloses that Respondent performed in a boxing contest, an act regulated by 1980 PA 299, as amended, at Andiamo Banquet Center, Warren, Michigan, on or about June 20, 2001. The Complaint further states that Respondent submitted a urine sample for screening, pursuant to 1995 AACCS, R 339.3236(1), and that the result of the urine screening indicated that Respondent tested positive for the presence of Cocaine Metabolites, contrary to 1995 AACCS, R 339.3236(2). The Complaint avers that Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL

339.604(c); MSA 18.425(604)(c).

FINDINGS OF FACT

Based upon the foregoing, I make the following findings of fact.

- (1) Respondent is licensed as a professional boxer under the Code.
- (2) On or about June 20, 2001, Respondent performed in a boxing contest at Andiamo Banquet Center, Warren, Michigan.
- (3) Respondent submitted to a urine screening which indicated positive test results for the presence of Cocaine Metabolites.
- (4) In performing under the contract, Respondent acted contrary to § 604(c) of the Occupational Code, 1980 PA 299, as amended; MCL 339.604(c); MSA 18.425(604)(c) and rule 236(2) of the Board of Athletic Control General Rules, promulgated thereunder, being 1995 AACCS R 339.3236(2), constituting grounds for the assessment of a penalty as defined in 1995 AACCS R 339.3236(2) and § 602 of the Occupational Code.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 230. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248; 406 NW2d 825 (1987). Based

upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated Sections 604(c) of the Occupational Code, 1980 PA 299, as amended; MCL 339.604(c); MSA 18.425(604)(c) and rule 236(2) of the Board of Athletic Control General Rules, promulgated thereunder, being 1995 AACS R 339.3236(2).

RECOMMENDED SANCTION

I recommend that Respondent's license be suspended for 90 days and submission of a scheduled drug screen thereafter. Respondent is ordered to pay a fine of \$1,000.00.

Howard T. Spence
Administrative Law Judge