

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

In the matter of

Docket No. 2001-648

**Bureau of Commercial Services,
Petitioner**

Agency No. 15-00-4691-00

v

Agency: Bureau of Commercial Services

**Tiwon Taylor,
Respondent**

Case Type: Sanction

**Issued and entered
this 13th day of August 2001
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Hal Ziegler, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Tiwon Tyler, nor an attorney on behalf of Respondent appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated May 14, 2001, scheduling a hearing for July 18, 2001. The Notice of Hearing was mailed to the parties' last known addresses. Further, the Notice of Hearing informed the parties that if either party failed to appear at the scheduled hearing, a Default may be 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 Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent, Tiwon Taylor, violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et. seq.*; MSA 18.425(101) *et. seq.* (Code).

At the hearing, Petitioner's representative 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 Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint dated September 19, 2000, are deemed true.

During the July 18, 2001 hearing, one exhibit was accepted into the record. That exhibit was: Exhibit 1 - Respondent's drug test results

During the July 18, 2001, hearing, no other evidence was offered into the record other than the exhibit.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated the following sections of the Code and rules promulgated under the Code: Section 604(c); (Code); and

1995 AACs, R 339.3236(2) (Rule). Those Section and Rule state in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(c) Violates a rule of conduct of an occupation.

R 339.3236(2) If such a test or examination results in a finding of the presence of a drug or alcohol or if the boxer or official refuses to submit to a test or refuses or is unable to provide a sample of body fluids for a test, a complaint shall be filed under the procedures of article 5 of the act. If a determination is made that the boxer or official is subject to disciplinary action, the board may impose the following penalties pursuant to the provisions of article 6 of the act:

(a) For a first violation, suspension for 90 days.

(b) For a second violation, a 1-year suspension.

(c) For a third violation, revocation of licensure.

FINDINGS OF FACT

Based on the record, I make the following findings of fact:

1. On or about July 7, 2000, Respondent performed in a boxing contest which was regulated by the Code.

2. On July 7, 2000, prior to the contest, Respondent submitted a urine sample for screening.

3. The results of the urine screening indicate that Respondent tested positive for the presence of Cannabinoids.

4. Respondent violated a rule of conduct in practicing an occupation.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994). 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 Dist., 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 the following rule and sections of the Code:

1. On July 7, 2000, prior to the contest, Respondent submitted a urine sample for screening, pursuant to Rule 339.3236(1).
2. The results of the urine screening indicate that Respondent tested positive for the presence of Cannabinoids, in violation of Rule 339.3236(2).
3. Respondent violated a rule of conduct in practicing an occupation, in violation of Section 604(c) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendations are made by the Administrative Law Judge to the Board: Respondent's boxing license be suspended for 90 days.

James L. Karpen
Administrative Law Judge