

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

In the matter of

Docket No. 2000-1572

Bureau of Commercial Services,
Petitioner

Agency No. 15-00-3068-00

v
Reggie Sanders,
Respondent

Agency: Bureau of Commercial
Services

Case Type: Sanction

Issued and entered
this 23rd day of October 2000
by Robert H. Mourning
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Hearing dated August 30, 2000, scheduling a contested case hearing for October 13, 2000. The Notice of Hearing was mailed to Respondent's last known address.

Appearances: Attorney D. Lynn Morison, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Reggie Sanders, nor an attorney on behalf of Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Petitioner that Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101-605; MSA 18.425(101)-(605) (Code).

The hearing in this matter commenced as scheduled on October 13, 2000. At the hearing, Attorney Morison requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.272; MSA 3.560 (272) (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:

- B. 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 were deemed true.

During the October 13, 2000, hearing, several exhibits were admitted into evidence. These exhibits were:

- | | |
|-----------|--|
| Exhibit 1 | Toxicology Lab Report, dated May 9, 2000 |
| Exhibit 2 | Inspector's Report, dated May 4, 2000 |

During the October 13, 2000, hearing, no other evidence was offered into the record other than the exhibits. No witnesses testified at the hearing.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code).

The specific issues in this case are whether or not the Respondent violated Section 604(c) of the Code and 1995 AACS, R339.3236(1) and 1995 AACS, R339.3236(2).

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(1) The department, the department representative, or the ringside physician may request that a boxer or assigned official take a test or submit to an examination designed to measure the presence of alcohol or drugs prior to a contest. The examination shall be made at a facility acceptable to the department. The promoter shall be responsible for the cost of testing boxers. An official shall be responsible for paying the cost of his or her examination.

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 May 4, 2000, Respondent performed in a boxing contest at Roostertail, Detroit, Michigan, which was regulated by the Code.
2. Respondent submitted a urine sample for a urine screening pursuant to Rule 339.3236(1).
3. Respondent's urine screening indicated positive results for the presence of Cannabinoids.
4. Respondent violated a rule of conduct in practicing his occupation as a professional boxer.

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 Rules and Section of the Code:

1. Respondent submitted a urine sample for a urine screening pursuant to Rule 339.3236(1).
2. Respondent's urine screening indicated positive results for the presence of Cannabinoids, violating R 339.3236(2).
3. Respondent violated a rule of conduct in practicing his occupation as a professional boxer, violating Section 604(c) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendation is made by the Administrative Law Judge to the Board:

Any and all licenses under Article 8 of the Code held by Respondent be suspended for ninety (90) days.

Robert H. Mourning
Administrative Law Judge