



DECISION of the FEI TRIBUNAL

dated 10 August 2007

Positive Medication Case No.: 2007/05

Horse: SPECIAL

FEI Passport No: NED07253

Person Responsible: Ms Suzan De Klein, AHO

Event: CDI 3*-W Kaposvar, Hungary, 13 – 15.10.2006

Prohibited Substances:

- (1) Prothipendyl
- (2) Hydroxy-Prothipendyl

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen
Mr. Pierre Ketterer
Mr. Patrick A. Boelens

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The FEI Tribunal took into consideration all documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: By teleconference on 9 July 2007.

Present: The FEI Tribunal Panel

For the FEI:

Mr Alexander McLin, General Counsel
Ms Laetitia Zumbrunnen, Legal Counsel

For the PR:

Ms Suzan De Klein, Person Responsible
Mr Klimke, Legal Counsel of the PR
Mr Dirk Haese, Owner of the horse

Observer:

Ms Lies De Backer, FEI Veterinarian

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 21st edition, revision effective May 2006, ("**Statutes**"), Arts. 001.6, 057 and 058 and Statutes 22nd edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21st edition, effective 1 June 2006, Arts. 142, 146.1 and 174 and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"), effective 1 June 2006.

Veterinary Regulations ("**VR**"), 10th edition, effective 1 June 2006, Art. 1013 and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Ms Suzan De Klein

3.3 Justification for sanction:

GR Art. 146.1: "The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

Subsequent to the adoption of the FEI Statutes, 22nd edition, effective 15 April 2007, the Judicial Committee is now referred to herein as the "Tribunal".

4. DECISION

4.1 Consideration of the evidence:

- a. Special (the "**Horse**") participated in CDI 3*-W Kaposvar, Hungary from 13 to 15 October 2006 (the "**Event**"). The Horse was ridden by Ms Suzan De Klein who is the Person Responsible in accordance with GR Article 142 (the "**PR**").

- b. The Horse was selected for sampling on 15 October 2006. Analysis of the urine sample no. FEI-0014579 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France, revealed the presence of prothipendyl and hydroxy-prothipendyl (Certificate of Analysis 0014579 dated 17 November 2006).
- c. On 6 February 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on urine at LCH from 13 to 22 February 2007 under the supervision of Dr Isabelle Pottier, and was witnessed by Dr Stojilkovic, Senior Analyst at LCH. It confirmed the presence of prothipendyl and hydroxy-prothipendyl (Counter-Analysis Report dated 22 February 2007).
- d. Hydroxy-prothipendyl, a metabolite of prothipendyl, and prothipendyl are antipsychotic (Certificates of Analysis 0014579 dated 17 November 2006 and 22 February 2007 and Veterinary Department's Statements transferred to the Legal Department on 20 December 2006 and on 28 February 2007) and accordingly are substances specified in the first section of the Equine Prohibited List (VR Annex III) as "Doping" Prohibited Substances.
- e. The FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substances. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCRs Article 3.
- f. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to rebut this presumption, in accordance with EADMCRs Article 10.5.
- g. In her written explanation dated 27 March 2007 the PR states that she has been riding competitions and championships for 17 years and at an international level for 3 years. She explains that she is aware of the rules and that she has already gone through doping tests before, which always resulted negative. The PR justifies that the only way the Horse could have been treated with these substances was when, as she was training in Holland, the Horse had been calmed down in order to balance his molars 11 days before the event.
- h. Research conducted by the PR led to the finding that the

Horse had been treated with a little mix powder of acepromazine and dominal (prothipendyl) on 2 October 2006. This is confirmed by the statement of Dr J.W.M. Nas, who treated the horse on that day, trying to calm the Horse down as he was very afraid. Dr Nas had tried to treat the Horse's teeth on 1 October 2006 but he could not. It was discussed during the hearing that an injection could not be given to the horse as he was too nervous.

- i. Dr Sluyter, Head of the Veterinary Department of the FEI, testified in his statement dated 24 April 2007 that the treatment reported by the PR appeared surprising for a dental work in a competition horse. He also stated that prothipendyl is not routinely used in horses as it is normally used for treatment of psychoses and agitation in humans. Dr Sluyter added that acepromazine is known to have an unpredictable excretion profile and can result in long detection times. In this regard, the FEI advises to use detomidine or romifidine as sedatives in competition horses, both drugs having a recommended detection time of 48 hours.
- j. The PR mentioned in her statements and at the hearing that Dr Nas knew she was to compete on 13 October 2006 and that he told her the Horse would be clear of any prohibited substance.
- k. Although the FEI Tribunal accepts that a horse may require sedation in order to balance its molars, it stresses that the substances used are obviously not the ones recommended by the FEI. The rather vague statement produced by the treating veterinarian, only mentioning the used substances without any justification for the choice of these long acting formula substances, is not sufficient. The employment of this kind of substance, conventionally used for human treatments, in a competition horse, is not legitimate.
- l. The PR acted with gross negligence when she participated in the event after Dr Nas sedated the Horse given that she did not exercise sufficient supervision in his treatment. Dr Nas had been the PR's veterinarian for about a year at that time. The PR had no knowledge whether he was used to treat international horses. She has neither asked Dr Nas whether or not he was aware of the FEI list of prohibited substances nor has she handed out the list when she brought the horse to the veterinarian clinic. The PR was not present when the Horse was sedated. The PR has not asked Dr Nas afterwards what sort of substance he had used. The PR relied totally on the vet's statement that the Horse could start on the event in Kaposvar.
- m. The Tribunal considers that, despite the explanations provided, the PR was negligent by not having ensured that the Horse was competing drug-free at the Event. The

Tribunal highlights that although it is understandable that the PR relied on the veterinarian that had treated the Horse, it is ultimately the PR's responsibility to ensure that the Horse does not participate at an Event with prohibited substances within its systems. Furthermore, the treating veterinarian should have been aware of the fact that the administered substances contained forbidden substances with an unpredictable detection time. In choosing a treating veterinarian, the PR should familiarize his/herself with the rules and regulations for international equestrian events which are specifically applicable. The PR should always inform his/herself of all treatments given to a horse and ensure that they are announced upon arrival at the event to the FEI Veterinary Delegate and that the relevant Medication Form is issued before the start of the competition.

- n. In deciding the sanctions the FEI Tribunal considered, on the one hand, the doping violation and types of substances involved as well as the conduct of the PR and her veterinarian and, on the other hand the level of the Event and the PR's cooperation in the investigation. The Panel considers that the positive result is sufficient to establish that despite the explanations given, the PR was grossly negligent by not having ensured that her Horse was competing drug-free at the Event.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse SPECIAL and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCRs Article 9.

4.3 Sanctions

As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174 and EADMCRs Article 10:

- 1) The PR shall be suspended for a period of **five (5) months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.
- 2) The PR is fined **CHF 2'000.-**.
- 3) The PR shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure, and **CHF 750.-** towards the cost of the confirmatory analysis.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: Counsel of the PR, Mr Klimke

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 10 August 2007

Signature: 