



DECISION of the FEI TRIBUNAL

dated 7 April 2014

Positive Anti-Doping Case No.: 2012/BS01

Horse: GLENMORGAN

FEI Passport No: UAE40813

Person Responsible: HH Sheik Hazza bin Sultan bin Zayed Al Nahyan

NF/ID: UAE/10014761

Event/ID: CEI3* 160 km, Abu Dhabi, Al Wathba (UAE), 2012_CI_0363_E_S_01

Date: 10 February 2012

Prohibited Substance: Propoxyphene

I. COMPOSITION OF PANEL

Dr. Armand Leone, Chair
Mr. Vladan Jevtic, Panel Member
Mr. Pierre Ketterer, Panel Member

II. SUMMARY OF THE FACTS

1. **Memorandum of case:** By Legal Department.
2. **Summary information provided by Person Responsible (PR):**
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
3. **Oral hearing:** none

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. **Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23rd edition, effective 15 November 2011 ("Statutes"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1, 161.2, 168.4 and 169 ("GRs").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012.

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

Veterinary Regulations ("VRs"), 12th edition, effective 5th April 2010, updates effective 1 January 2012, Art. 1013 and seq. and Annex II (the "Equine Prohibited Substances List").

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: HH Sheik Hazza bin Sultan bin Zayed Al Nahyan

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 GLENMORGAN (the "Horse") participated at the CEI3* 160 km in Abu Dhabi, Al Wathba, United Arab Emirates, on 10 February 2012 (the "Event"), in the discipline of Endurance. The Horse was ridden by HH Sheik Hazza bin Sultan bin Zayed Al Nahyan who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 11 February 2013.
- 1.3 Analysis of blood sample no. 5513146 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC") by Mr. Colton Ho Fai Wong, Chemist under the supervision of Ms. Emmie Ngal Man Ho, Racing Chemist. The analysis of the sample revealed the presence of Propoxyphene and Norpropoxyphene.
- 1.4 The Prohibited Substance detected is Propoxyphene. Propoxyphene is an opiate analgesic, used for the treatment of pain. Norpropoxyphene is a metabolite of Propoxyphene. Propoxyphene is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Therefore, the positive finding for Propoxyphene in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 12 March 2012, the FEI Legal Department officially notified the PR, through the United Arab Emirates Equestrian & Racing Federation ("UAE-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. In the Notification Letter, the PR was also informed that due to the fact that he had been held responsible in 2005 for an Anti-Doping Rule violation with the horse HACHIM (CAS 2005/A/895 – Arbitral Award 9 March 2006), the period of Ineligibility to be imposed on him would be increased by the Hearing Panel, under Articles 10.2 and 10.7 of the EAD Rules and taking into account the respective severity of both EAD Rule violations and the circumstances of the particular case.
- 2.2 The Notification Letter further included notice to the owner of the Horse, that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, i.e. 12 March 2012, until 11 May 2012. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.
- 2.3 Upon request by the PR, a Preliminary Hearing took place on 2 April 2012. During the Preliminary Hearing, the PR explained that he did not have any explanations regarding the source of the Propoxyphene, but

that a thorough investigation had been launched at the stable of the Horse, W'rsan Stables, in order to determine the source of the positive test result. Following the Preliminary Hearing, the Preliminary Panel decided that the presence of a Prohibited Substance in the Horse's sample was not questionable, and therefore the Provisional Suspension was maintained.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 12 March 2012, the PR was also informed that he was entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 12 April 2012, and following request by the PR for the B-Sample analysis to be performed in a different laboratory, the B-Sample analysis of the blood sample was performed at the Laboratoire des Courses Hippiques ("LCH") in Verrières le Buisson, France, by Ms. Murielle Jaubert, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director. Mr. Elliot David Hall of Penumbra Partners Limited and Dr. Mark Dunnett of Independent Equine Nutrition witnessed the identification, opening and analysis of the B-Sample for the PR.
- 3.3 The B-Sample analysis confirmed the presence of Propoxyphene and Norpropoxyphene.
- 3.4 The results of the B-Sample analysis were provided to the PR by the FEI Legal Department through the UAE-NF on 24 April 2012.

4. The PR's written submissions

- 4.1 On 19 June 2012, the PR submitted his explanations to the charges. Together with his explanations the PR provided an expert report by Dr. Dunnett. In his report Dr. Dunnett came to the conclusion that both the A- and B-Sample analysis had been performed correctly, and in accordance with established and validated analytical procedures. That furthermore, there was no legitimate use for Propoxyphene in horses, and that, based on estimated concentrations of the substances found in the A- and in the B-Sample, administration of Propoxyphene had occurred probably eleven (11) to nineteen (19) hours prior to sample collection.
- 4.2 In addition, the PR provided witness statements by the following individuals: himself; Dr. Syed Kamaal Pasha, by Mr. Majid Ali Al Kayomi, Racing Manager at W'rsan Stables; Dr. Jose de Souza Meirelles, Deputy Stable Manager and Horse Physiologist and Nutritionist at W'rsan Stables; Mr. Yahia Mohamed Adam Eina, groom/rider at W'rsan Stables; Mr. Hall. In their statements, the PR and his witnesses explained in detail the security measures put in place at W'rsan Stables, aiming at

preventing any positive test. They explained that pre-race testing was amongst those measures, and that such pre-race tests had also taken place prior to the Event, and had resulted in negative test results.

4.3 In his witness statement, Dr. Pasha further explained that he was responsible for overseeing the administration of all medication to the five hundred fourteen (514) horses held at W'rsan Stables. That all medicines, including any substances that were prohibited in-competition, were locked in a pharmacy, and that he counter-signed each medication taken out of the stock. That however, no products containing the substance Propoxyphene or its metabolite Norpropoxyphene had been kept in the pharmacy, nor used by him or his team. That further, before buying any new medicines, he always asked for a complete breakdown of the ingredients of the respective product, and requested a certificate confirming that they were "race allowed", and therefore without any Prohibited Substances. That Dr. Meirelles underwent similar checks prior to buying nutritional products and dietary supplements. Finally, Dr. Pasha confirmed that in the weeks and months prior to the Event, the Horse had been of excellent health.

4.4 In essence the PR submitted:

- a) That he was the owner of W'rsan Stables, and therefore also the owner of the Horse.
- b) That he accepted that his Horse had tested positive for Propoxyphene, and that – as confirmed by Dr. Dunnett - both the A- and B-Sample analysis had been performed correctly, and in accordance with established and validated analytical procedures.
- c) The PR on the one hand accepted that he is the Person Responsible for the case at hand, but claimed at the same time that he had not signed anything to confirm that he was the Person Responsible, and that he had only been in contact with the Horse while riding it, not prior to or after riding it. He furthermore argued that the responsibilities of the PR as foreseen under Article 118.6 of the GRs do not fit the purpose of endurance races in the Middle East, and do not present the realities of that sport in that part of the world. In this context he argued that riders have very limited contact with the horse prior to the race, and have very limited responsibilities.
- d) Regarding the source of the Prohibited Substance the PR contended that he did not know how the Prohibited Substance had entered the Horse's body, and insisted that thorough and detailed investigation into the circumstances had shown that the risk of deliberate contamination by W'rsan staff was very low.
- e) That he had put stringent security measures in place at W'rsan Stables. That amongst others, pre-race testing had taken place on 2 February 2012, which had turned out negative for the Horse.

- f) That however no adequate security had been provided at the Event either by the Chief Steward or the FEI, and that the overall security of the horses accommodated at the Event had not been guaranteed.
- g) That finally, the previous Anti-Doping Rule violation concerning the horse HACHIM should not lead to an increased sanction, as the Court of Arbitration for Sport ("CAS") had described the PR's evidence as convincing and as no fine or period of Ineligibility had been imposed on the PR at the time. That therefore, it was "inappropriate and grossly unfair" to impose increased sanctions due to aggravating circumstances resulting from that case.

5. The FEI written submission

5.1 On 21 September 2013, the FEI provided its Response to the PR's Submission of 19 June 2012. In essence the FEI argued:

- a) That the PR had not disputed that Propoxyphene and Norpropoxyphene were present in the sample collected from the Horse at the Event and that it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
- b) In response to the PR's considerations regarding the concept of the Person Responsible the FEI referred to Article 118.3 of the GRs, which stipulated that "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Person Responsible if they are present at the Event or have made a relevant Decision about the Horse". The FEI argued that therefore, in order to qualify as Person Responsible, it was not necessary to sign anything, or to make any other declaration. That the status of the Person Responsible was acquired by the actions as described under Article 118.3 of the GRs, specifically by riding the Horse at an Event. Lastly that the argument is advanced by the PR that the concept of the Person Responsible is inconsistent with the way the discipline of Endurance in the Middle East is practiced, which is an argument that has been brought forward by other PRs in the past, but that a pending Anti-Doping procedure was not the adequate forum to discuss this question.
- c) That the PR had not complained about the alleged lack of stable security at the time of the Event or the testing, and had not noted the respective complaint on the "remarks" section of the FEI Medication Control Form completed during the sampling procedure.
- d) That, as the PR had not established how the Prohibited Substances had entered the Horse's system, no elimination or reduction of the period of Ineligibility under Article 10.5 of the EAD Rules was applicable.

- e) With regard to the 2005 positive case involving the horse HACHIM, the FEI contended that the PR had been disqualified from the Event at stake at the time by decision of CAS, due to the positive finding of the Prohibited Substance Methylprednisolone, and that therefore a first violation had been unequivocally established.
- f) That therefore a period of Ineligibility of two (2) years should be imposed on the PR. That furthermore the Tribunal should take into account the first violation by the PR as aggravating circumstances under Article 10.6 of the EAD Rules.

6. Additional submission by the PR

- 6.1 On or about 17 July 2013, the PR requested an extension of time to respond to the FEI written submissions because of a religious holiday, and the Tribunal granted an extension for the time to respond to 16 September 2013.
- 6.2 On 16 September 2013, the PR provided an additional Submission. Together with his additional Submission the PR provided another statement by Dr. Pasha. Dr. Pasha explained that a total of three further horses from stables within the UAE had also tested positive for the substance Propoxyphene, around the same time as the Horse in question. That one of these horses was from Al Ain Endurance stables and that following the positive finding, Al Ain Endurance stables had quarantined that horse, and had administered a product called FUSTEX, produced by Chinfield S.A. in Argentina, to it during the quarantine. That the quarantined horse from the Al Ain Endurance stables had also tested positive for Propoxyphene and that in the following, Al Ain Endurance stables, through the UAE-NF, had requested analysis of samples of the product FUSTEX from two different laboratories - Abu Dhabi Police laboratory and the HKJC. Dr. Pasha also submitted the test results from the Abu Dhabi Police laboratory and the HKJC of December 2012 and February 2013 respectively, and according to those test results the presence of Propoxyphene had been detected in the FUSTEX samples provided to the two entities. Dr. Pasha explained that only at the moment when he had learnt that the two FUSTEX samples had returned positive for Propoxyphene he had remembered having administered 1cc of FUSTEX as a "pick me up" to the Horse, after the Horse had completed its pre-race training on the day prior to the Event. That the intention of the FUSTEX administration had been to help the Horse to relax after a hard pre-race training, even though the Horse seemed fine. Dr. Pasha also explained that another veterinarian had told him that FUSTEX was a good and effective pre-race muscle stimulant, and that the product was freely marketed by Gulf Center in Bhuraimi, Oman. Further, that he had received a vial of the product from Frederico, a Veterinarian of Al Ain Endurance stables, and that Frederico had also talked positively about the product at an event, which had taken place prior to the Event in question. That the vial had been given to him in a branded box, and that the box had contained the sealed FUSTEX bottle and the manufacture's insert. That he had checked all ingredients listed on the product's leaflet,

and that the leaflet did not list Propoxyphene. That furthermore, prior to placing the FUSTEX vial in the emergency medicine kit, he had also satisfied himself that the seal on the vial had been intact. That however, as he had received the vial of FUSTEX from a veterinarian, he had not recorded it in his log book of purchases. That finally he had informed Mr. Al Kayoumi that he was intending to administer FUSTEX to the Horse, and that he had not used the product before. That upon Mr. Al Kayoumi's questioning, Dr. Pasha told him that he believed at the time that he gave the product to the horse that it did not contain any Prohibited Substances.

6.3 The PR also submitted a leaflet for the FUSTEX product. According to the leaflet each 5ml of FUSTEX contained 250mg of "Paradiphenbutirate" and 5ml of formulation agents. Further details of the content will be addressed below to the extent necessary. The PR further provided additional test results from the Abu Dhabi Police laboratory of February 2012, according to which six (6) horse blood samples, previously submitted by W'sran Stables for pre-competition analysis, had contained no prohibited substances. The PR also submitted a list of veterinary treatments provided to the Horse in the period from 11 January 2011 to 9 February 2012, and a Pre-Ride Medication form, listing all products administered to the Horse from 5 to 9 February 2012. Lastly, the PR provided a list dated 7 February 2012 recording several medicines received by Dr. Pasha from a clinic. None of these three lists included any entry for FUSTEX.

6.4 In essence, the PR further submitted:

- a) That following the supplemental witness statement by Dr. Pasha, only the use of the product FUSTEX could have possibly caused the positive result. In this context the PR argued that while the substance Propoxyphene was not listed as ingredient on the product label of FUSTEX, his investigations had shown that the product FUSTEX did contain Propoxyphene.
- b) That due to the strict liability rule he might be at fault by virtue of the Prohibited Substance found in the Horse's system. That however, he had not been negligent, as he had put stringent procedures in place – as described and confirmed by several witnesses - with the aim to prevent contamination, and that despite his best endeavours to preclude contamination, the drug had ended up in the Horse's system.
- c) That any sanction should be reduced significantly from the proposed two years period of Ineligibility.

7. Additional Response by the FEI

7.1 Upon receipt of the PR's additional Submission, the FEI requested an extension of time in order to investigate the PR's claim that the FUSTEX contained propoxyphene and to respond thereto. The Tribunal granted the FEI's request for an extension and set 24 February 2014 as the date for the FEI's Additional Response.

- 7.2 On 24 February 2014, the FEI provided its Response to the PR's additional Submission of 16 September 2013. Together with its Response, the FEI provided a laboratory report from the Horseracing Forensic Laboratory ("HFL") of 17 February 2014, by which HFL reported that a sample of FUSTEX had been analysed and revealed the presence of Propoxyphene.
- 7.3 The FEI further provided an expert statement by Dr. Stuart Paine BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS. Dr. Paine came to the conclusion that it was plausible that the content of the vial of FUSTEX administered to the Horse had caused the positive finding, provided however that the vial administered to the Horse had contained the same content as the sample of FUSTEX analysed by HFL. Regarding the Prohibited Substance detected in the product Dr. Paine clarified that Propoxyphene was not a muscle stimulant, but a narcotic analgesic, or pain killer. Dr. Paine further explained that the term Paradiphenbutirate was a term that was "unknown, complex, fictitious and meaningless from a chemical point of view". That however, even if therefore Dr. Pasha would not have known what the active ingredient of FUSTEX was, or the scientific chemical name thereof, he should have known the recommended antagonist drugs, namely nalorphine and levalorfan, from the leaflet of the product were opiate reversal agents. That further, based on that information, he would have known that the active ingredient was a mu opioid agonist, with pain killing and anaesthetic properties.
- 7.4 The FEI further submitted an email dated 2 December 2013 by Mr. Enrique Fischer, Director of Chinfield S.A. In his email, Mr. Fischer confirmed that the product FUSTEX contained Dextropropoxyphene. That however, for commercial reasons, the name "Paradiphenbutyrate" had been used instead, and that Paradiphenbutyrate had been accepted as a synonymous of Dextropropoxyphene by Argentina's Official Organization of Registration of Veterinary Products, SENASA. In this context the FEI further explained that it had contacted SENASA several times for confirmation of Chinfield's allegation, but had not received any answer.
- 7.5 In addition, the FEI submitted a statement by Dr. Terrence See Ming Wan, Director of the HKJC. Dr. Wan explained that in 2009, the HKJC had been requested by a forensic laboratory in Abu Dhabi to analyse a sample of FUSTEX. That at the time the FUSTEX sample had led to a positive finding for Stanazolol. Dr. Wan further explained that the name of the product's main ingredient, Paradiphenbutirate, is not a real chemical term, and meant nothing to any qualified chemist. That further, as Paradiphenbutirate was an unknown or fictitious chemical, he could not think of a legitimate reason to declare Paradiphenbutirate as the ingredient of any product.
- 7.6 The FEI also provided a statement by Mr. Steve Maynard, Director of HFL, who explained that Paradiphenbutirate was a chemical term unknown to him.

- 7.7 Finally, together with its Response the FEI also provided a statement by Dr. Steven A. Schumacher, DVM, member of the FEI Veterinary Committee and Chief Administrator of the Equine Drugs and Medications Program for the United States Equestrian Federation ("USEF"). In his statement, Dr. Schumacher stated that, if faced with the situation Dr. Pasha had been faced with at the time, he would have searched the scientific literature for peer reviewed scientific articles that support any claims made by manufacturers. Dr. Schumacher further explained that he had performed such research, and that he had not found anything within the scientific literature regarding the compound Paradiphenbutirate. He further stated that whereas on the website of Chinfield S.A. the product FUSTEX was described as a "muscle stimulator for sport horses", little background was provided explaining the mechanism of action.
- 7.8 In essence the FEI argued:
- a) That – as confirmed by Dr. Paine – it was possible that the FUSTEX administered to the Horse had caused the positive finding, provided however that the vial of FUSTEX administered to the Horse had contained the same content as the sample of FUSTEX analysed by HFL. That however, it was not excluded with certainty that the vial administered to the Horse had not contained other substances, such as Stanazolol. Furthermore, that the results of the two tests performed by the PR on samples of FUSTEX were not adequate in order to determine the source of the Prohibited Substance, as the PR had not provided any evidence regarding the source of those samples, or information on the chain of custody. That further, the PR had also not provided any supporting evidence with respect to his allegation that two or three other horses in the UAE had also tested positive for Propoxyphene, following administration of FUSTEX.
 - b) With respect to the question of Fault or Negligence for the rule violation, Dr. Pasha acted highly negligently and with the intention of enhancing the Horse's performance. Firstly, that Dr. Pasha, who had used a product unknown to him at the time, had acted clearly negligently and with fault, as the only checks, prior to using the product, had been the consultation of the product's leaflet and the oral feedback by a fellow veterinarian. That this was however insufficient in case of the use of an unknown product, and even more in light of the fact that the substance listed as FUSTEX' main ingredient, Paradiphenbutirate, was an unknown, fictitious term. That further research should have been performed on the product – as also confirmed by Dr. Schumacher – such as an online search, contacting the manufacturer, searching for scientific literature etc., in order to find more scientifically based information. That – and as confirmed by Dr. Paine, Dr. Wan, and Mr. Maynard in their statements – Dr. Pasha, as a qualified veterinarian, having determined "Paradiphenbutirate" as main ingredient of FUSTEX, should have been puzzled about this term, and that the term should have triggered him to do further research, in order to be duly satisfied that FUSTEX was suitable for use at W'san Stables.

- c) Secondly, that Dr. Pasha had also intentionally used the product in order to enhance the Horse's performance, as at the time when he was using the product, he had thought using a muscle stimulant. That it was questionable why Dr. Pasha would use a muscle stimulant for a competition horse, as it was obvious that a "muscle stimulant" - even though as such not a scientific term - would stimulate muscles in a positive/negative way, i.e. gain advantage or be a disadvantage, and would therefore be banned under any sporting rules. Furthermore, that it was notable that Dr. Pasha - as admitted by him - had not recorded the administration of the product FUSTEX anywhere.
- d) Finally that competitors, as the Tribunal had repeatedly expressed in its decisions, were responsible for their staff and the care given to their horses by support personnel, and that therefore any fault or negligence of the support personnel was attributable to the PR. That the Tribunal had further held that riders had to ensure that their support personnel - through the establishment of clear and defined procedures and protocols, checks and personal responsibility - treated Prohibited Substances, even if authorised, as extremely dangerous products, as these may result in positive samples with all the negative consequences to follow.
- e) That the fact that no suspension had been imposed on the PR with regard to the 2005 positive case involving the horse HACHIM was not relevant and did not justify to not consider the first violation in determining sanctions in the case at hand. Further that in 2005, a completely different system of sanctions in general had been applied to Equine Anti-Doping cases, and that sanctions had been generally lower and milder.
- f) That therefore, in accordance with Article 10.2 of the EAD Rules, a period of Ineligibility of two years should be imposed on the PR, without any elimination or reduction under Articles 10.4 or 10.5. That further, the Tribunal had to take into account the first violation as aggravating circumstances as set forth in Article 10.6 of the EAD Rules.

8. Rebuttal submission by the PR

- 8.1 On 11 March 2014, the PR provided his Rebuttal Submission. In essence the PR further submitted:
 - a) That he was saddened that a contamination had occurred, despite his strenuous efforts to preclude such mistakes by his highly-trained and well-regarded professional staff.
 - b) That, as a matter of natural justice, it would be unfair to increase the sanction in the case at hand taking into consideration the PR's disqualification in 2005, as a different system of sanctions had applied at the time.

9. Jurisdiction

- 9.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

10. The Person Responsible

- 10.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event. The Tribunal finds that the status of the Person Responsible is acquired by the actions as described under Article 118.3 of the GRs, specifically by riding the Horse at an event, as had happened in the case at hand. The Tribunal further finds that therefore, it is not necessary for any person falling under the prerequisites of Article 118.3 of the GRs to have signed a document, or made any other declaration in order to be considered as Person Responsible under Article 118.3 of the GRs. Finally, the Tribunal takes note of the PR's claim that the concept of the Person Responsible was inconsistent with the way the discipline of Endurance in the Middle East was practiced. The Tribunal however finds that a pending Anti-Doping procedure is not the adequate forum to discuss this question, and that – absent any change of the concept of the Person Responsible in the FEI Regulations - the GRs, including Article 118.3 of the GRs, apply to each person competing in any FEI discipline anywhere around the world.

11. The Decision

- 11.1 The Tribunal is satisfied that the laboratory reports relating to the A- and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both HKJC and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Propoxyphene and Norpropoxyphene in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Propoxyphene is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Norpropoxyphene is a metabolite of Propoxyphene.
- 11.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules. This is undisputed between the Parties.
- 11.3 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and the PR has the burden of proving that he bears "No Fault or Negligence" for the positive finding as set forth in Article 10.5.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5.2 of the EAD Rules. However, in order to benefit from any

elimination or reduction of the applicable sanction under Article 10.5 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.5 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

- 11.4 The Tribunal takes note of the evidence produced by the PR on how the Propoxyphene had entered the Horse's system. In a first step, and given the PR's explanations, the Tribunal has to decide whether or not the allegedly Propoxyphene containing product FUSTEX had been administered to the Horse. While none of the three documents provided by the PR in this context – the list of veterinary treatments, the Pre-Ride Medication Form and the list of medicines received by Dr. Pasha from a clinic - reference any administration of the product FUSTEX to the Horse, the Tribunal, in taking into account the witness statement of Dr. Pasha, believes that it is more likely than not that Dr. Pasha administered the product FUSTEX to the Horse on the day prior to the Event.
- 11.5 In a second step, the Tribunal has to decide whether the vial of the product FUSTEX given to the horse in February 2012 did indeed contain the Prohibited Substance Propoxyphene. To start with, the Tribunal notes that the Prohibited Substance Propoxyphene is not been listed on the product label, but that the name "Paradiphenbutyrate" is listed and allegedly is used as a synonym for Dextropropoxyphene. The Tribunal also takes into account that the sample of FUSTEX analysed by the HFL in February 2014 revealed the presence of Propoxyphene. The Tribunal further takes note of the test results from December 2012 and February 2013 of samples of the product FUSTEX that had been analysed by two different laboratories - Abu Dhabi Police laboratory and HKJC. However, the Tribunal finds that it cannot take these test results into consideration when deciding whether the PR has established the source of the Prohibited Substance, as the PR had not provided any evidence on the source of those samples, or information on the chain of custody. In addition, the Tribunal understands that an analysis of another sample of FUSTEX in 2009 had led to a positive finding for Stanazolol. As a result, the Tribunal is unable to find on the balance of the probability that the PR has established that the actual vial of the product FUSTEX that was given to the Horse in 2012 prior to the Event did indeed contain some Propoxyphene. Even if the PR could establish that the vial of FUSTEX given to the Horse in 2012 did contain Propoxyphene, the Tribunal finds that the PR acted negligently in this case and cannot established that he bears No Significant Fault or Negligence for the rule violation (see below).
- 11.6 With regards to the question of Fault or Negligence for the rule violation the Tribunal acknowledges that the PR claims having put in place "stringent procedures" with the aim to prevent any contamination or positive testing. However, the Tribunal finds at the same time that based on the evidence submitted in the present case, these procedures had not been followed in the case at hand, neither with respect to the acquisition or the storage of the product FUSTEX. In addition, a diligent check was not conducted regarding the suitability of the product FUSTEX, as Dr.

Pasha had only performed a minimum check, limited to the consultation of the product's leaflet and the oral feedback by a fellow veterinarian. The Tribunal therefore finds that Dr. Pasha had been clearly negligent when using a product unknown to him. The Tribunal further holds that it would expect a veterinarian to conduct further research on a product used by him for the first time, and substances contained in it, including contacting the manufacturer of the product. In addition, the Tribunal would have expected for Dr. Pasha to undertake a profound search in scientific literature, as the substance listed as the main ingredient of the product, the compound Paradiphenbutirate, appeared to be an unknown chemical term.

- 11.7 The Tribunal further holds that ultimately, and similar to the PR's responsibility to choose trustworthy companies producing nutritional products and dietary supplements, it is the PR's responsibility to choose a trustworthy company producing medications. That in the case at hand, Chinfield S.A. seems to not have fulfilled these criteria.
- 11.8 The Tribunal also takes note of Dr. Pasha's statement that he had administered 1cc of FUSTEX as a "pick me up" to the Horse after it had completed his pre-race training on the day prior to the Event, intending to help the Horse relax after a hard pre-race training. In this respect the Tribunal understands that Dr. Pasha had not recorded the administration of the product FUSTEX anywhere, including the Pre-Ride Medication list, nor did he mention the product in his initial Statement of Truth, dated 15 May 2012. The Tribunal finds that the evidence shows that Dr. Pasha intentionally used the product FUSTEX, in order to enhance the Horse's performance. Whereas in the case at hand, the charges are only against the PR, the Tribunal comes to the conclusion that the actions by Dr. Pasha could potentially qualify as a violation by Dr. Pasha himself of the EAD Rules.
- 11.9 Finally, the Tribunal clarifies that, as held in previous decisions (i.e. TACKERAY, Final Tribunal Decision, dated 14 September 2009), Persons Responsible are responsible for their support personnel and the medical treatment given to their horses by their veterinarians. The Tribunal therefore finds that the negligence of Dr. Pasha is attributable to the PR in the case at hand.
- 11.10 In conclusion, the Tribunal finds that the PR has not succeeded in establishing that he bears No (Significant) Fault or Negligence for the rule violation.
- 11.11 Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Article 10.5.1 or Article 10.5.2 of the EAD Rules.
- 11.12 As regards the rule violation committed by the PR in 2005 involving the horse HACHIM, the Tribunal first of all takes note that the PR does not contest having violated the then applicable Anti-Doping rule violations, and that therefore, and based on the respective CAS decision, the 2005 Anti-Doping Rule violation by the PR has been unequivocally established.

The Tribunal further understands that the HACHIM CAS panel had decided that “under the circumstances”, disqualification was sufficient and that no fine or suspension shall be imposed on the PR. Further that in 2005, a completely different system of sanctions had been applied to Equine Anti-Doping cases, and that sanctions had been generally lower and milder. Whereas it is not entirely clear to the Tribunal which “circumstances” the CAS panel relied upon to determine that disqualification was sufficient at the time, the Tribunal finds that in order to determine whether or not to consider the 2005 rule violation as aggravating factor, it is decisive that the CAS panel at the time had ruled disqualification of the Horse and the rider, due to a violation of the then applicable Anti-Doping Rules. Therefore, and in accordance with Articles 10.7 and 10.6 of the EAD Rules, the Tribunal is considering the 2005 rule violation as a factor in determining aggravating circumstances, and therefore finds that aggravating circumstances are present in the case at hand. As a result, the Tribunal holds that a period of Ineligibility greater than the standard sanction is to be imposed. The Tribunal however only imposes a short additional period of Ineligibility for the 2005 violation, given that CAS had not imposed any other sanction than disqualification at the time.

- 11.13 The Tribunal considers that the Provisional Suspension of the Horse of two (2) months, imposed by the FEI at the beginning of the proceedings, had been rightfully imposed in accordance with Article 7.4 of the EAD Rules, as the Horse's A-Sample and B-Sample had tested positive for a Banned Substance. Under Article 7.4 of the EAD Rules, the FEI has the discretion to impose a Provisional Suspension of any period of time on the Horse.

12. Disqualification

- 12.1 For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.

13. Sanctions

- 13.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. However, given the 2005 violation, the Tribunal finds that the PR is not a first offender in the meaning of the EAD Rules, and the first violation by the PR is considered as aggravating factor, as explained above.
- 13.2 As set forth in Article 10.2 of the EAD Rules, and unless fairness dictates otherwise, a fine of CHF 15,000 is foreseen for an EAD Rule violation. When deciding the fine the Tribunal takes into consideration the Prohibited Substance detected and the degree of Negligence by the PR.

13.3 The Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years** for the present rule violation. Furthermore, and under Article 10.7 read together with Article 10.6 of the EAD Rules, the PR shall be suspended for an additional period of **three (3) months** for the 2005 violation. The period of Provisional Suspension, effective from 12 March 2012, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible through **11 June 2014**.
- 2) PR is fined **five thousand Swiss Francs (CHF 5000,-)**.
- 3) The PR shall contribute **two thousand Swiss Francs (CHF 2000,-)** towards the legal costs of the judicial procedure, as well as the cost of the B-Sample analysis, including transportation, and the costs for the analysis of the sample of FUSTEX analysed by the HFL.

13.4 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.9.1 of the EAD Rules). Under Article 10.9.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

13.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned

13.6 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Armand Leone', is centered below the text 'FOR THE PANEL'.

THE CHAIR, Dr. Armand Leone