



## **DECISION of the FEI TRIBUNAL**

**dated 27 July 2016**

**Positive Anti-Doping Case No.:** 2015/BS09

**Horse:** SIR DE DIAMANT

**FEI Passport No:** 102PH75/IRI

**Person Responsible/NF/ID:** Mohammad Davoud Shekofti/IRI/10120008

**Event/ID:** CSI2\* - Tehran (IRI) - 2015\_CI\_0641\_S\_S\_01\_03

**Date:** 22 – 25 September 2015

**Prohibited Substances:** Stanozolol, 16 Beta Hydroxy-Stanozolol, Flunixin, Dexamethasone

### **I. COMPOSITION OF PANEL**

Mr. Chris Hodson QC, chair  
Mr. Henrik Arle, member  
Mr. Laurent Niddam, 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 and the oral hearing, as also made available by and to the PR.
- 3. Oral hearing: 18 July 2016 - Lausanne, Switzerland**

Present:

The FEI Tribunal Panel  
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Mr. Mohammad Davoud Shekofti, PR  
Mr. Ramin Shaki, trainer

For the FEI:

Mr. Mikael Rentsch, Legal Director  
Ms. Aine Power, Legal Counsel  
Ms. Müskat Hotin, Litigation Administrator

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Relevant Articles of the Statutes/Regulations:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2015, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2015.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2015.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition, effective 1 January 2015, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Mohammad Davoud Shekofti

#### **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 – 2.8 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, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced at the oral hearing. 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 Tribunal has fully 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 SIR DE DIAMANT (the "**Horse**") participated at the CSI2\* in Tehran, Iran, from 22 to 25 September 2015 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Mohammad Davoud Shekofti who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event, on 24 September 2015.
- 1.3 Analysis of blood sample no. 10022779 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**") in France. The analysis of the sample revealed the presence of Stanozolol, 16 Beta Hydroxy-Stanozolol, Flunixin and Dexamethasone in the plasma.
- 1.4 The Prohibited Substances detected are Stanozolol, 16 Beta Hydroxy-Stanozolol, Flunixin and Dexamethasone. Stanozolol is an anabolic steroid and 16 Beta Hydroxy-Stanozolol is a metabolite of Stanozolol. Both substances are classified as Banned Substances under the FEI Equine Prohibited List. Flunixin is a non-steroidal anti-inflammatory drug (NSAID) with anti-inflammatory and anti-pyretic effects. Dexamethasone is a corticosteroid with anti-inflammatory effect. Flunixin and Dexamethasone are classified as Controlled Medication Substances. Therefore, the positive finding for Stanozolol, 16 Beta Hydroxy-Stanozolol, Flunixin and Dexamethasone in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

### 2. The Further Proceedings

- 2.1 On 16 November 2015, the FEI Legal Department officially notified the PR, through the Iran National Federation ("**IRI-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences. 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.

- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 16 November 2015, until 15 January 2016. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

### **3. The B-Sample analysis**

- 3.1 Together with the Notification Letter of 16 November 2015, 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 The PR did not request for the B-Sample to be analysed, and accepted the results of the A-Sample analysis.

### **4. Written submissions by the PR**

On 7 February 2016, the PR explained that he was the rider of the Horse at the Event, and that he was also the owner of the Horse. That he owned ten (10) horses and loved them very much. The PR further explained that he had not received any anti-doping education prior to the Event. The Prohibited Substances had been administered to the Horse by his trainer, without his knowledge. That this was his neglect, which was due to his ignorance about doping. Further, that he accepted that it had been his responsibility to warn his trainer about the matter. Finally, the PR promised to not repeat such mistake, and as a first time offender he requested for forgiveness.

### **5. Written submission by the FEI**

- 5.1 On 13 April 2016, the FEI submitted its Answer to the explanations of the PR.
- 5.2 Together with its Answer the FEI provided an Incident report regarding the Horse by the Chief Steward at the Event. The report stated that the Horse had been presented with a watery, slightly closed left eye during the veterinary inspection. It was suggested by the PR that during transportation debris (hay seeds, dust) may have blown into it and caused an irritation. After close examination, it was decided that on welfare grounds the Horse would not be permitted to participate at the competition. It was also noted that some fresh superficial grazes were present around the eye and the lower muzzle during morning inspection. The PR asked whether the Horse could be re-assessed the next morning for the possibility of participation on the second day of the

Event. In the morning of the second day a huge improvement of the condition of the Horse's eye had been noticed, and it had been agreed to allow the Horse to participate; however, due to the quick recovery of the eye, the decision had been taken to test the Horse after it competed.

5.3 The FEI further stated that, according to the Veterinary Form 2, the Horse was treated with Cyclosporine in the left eye by the treating veterinarian on 23 September 2015.

5.4 In essence the FEI submitted that:

- a) According to Article 10.8.6 EAD Rules, violations involving both a Banned Substance and a Controlled Medication Substance shall be considered as one violation and counting as a Banned Substance violation. This meant that the administration of a Banned Substance at any time to horses competing in events to which the EAD Rules apply constituted a violation of Article 2.2 of the EAD Rules, and its presence in a horse's sample at any time constituted a violation of Article 2.1 of the EAD Rules. The presence of several Banned Substances in a horse's sample could also lead to aggravating circumstances under Article 10.7 of the EAD Rules.
- b) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"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"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A- Sample taken from the Horse at the Event confirmed the presence of Stanozol, 16 Beta Hydroxy-Stanozol, Flunixin and Dexamethasone, and together constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of those Prohibited Substances in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offence who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or (iii) that he bears No Significant Fault or Negligence for that occurrence. If

the PR failed to discharge this burden, the presumption of intentional administration and performance stood.

- d) The EAD Rules stipulate, and the jurisprudence of the Tribunal and the CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance entered into the horse's system. In the FEI's opinion, the PR – only explaining that "the doping had been done by the trainer and that he has not been aware" - has not provided any plausible explanation of how the Stanozol, 16 Beta Hydroxy-Stanozol, Flunixin and Dexamethasone could have entered into the horse's system.
- e) The FEI submitted that the level of the PR's fault was high and he has been negligent with regards to his responsibilities under the EADCMRs which has resulted in the rule violation. In fact, that the PR had not undertaken any specific action in order to comply with his personal duty to ensure that no Banned Substance was present in the horse's body.
- f) Referring to several CAS cases (CAS 2013/A/3318 Stroman v. FEI; and CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI) the FEI argued that the PR could not rely on any person to perform this duty. In CAS jurisprudence it was clear that "*the duty of caution or due-diligence is non-delegable.*"
- g) The FEI further argued that it was its position that doing nothing and blaming the negligence on lack of education was definitely not sufficient, for the PR, to comply with his obligation to ensure that no Prohibited Substances were present in the Horse's body. The FEI made reference to a previous Tribunal decision (Case 2014/CM01, SIR STANWELL, Final Tribunal Decision dated 25 June 2015), where the panel had stated that "*Article 2 of the ECM Rules clearly required riders to know what constituted a rule violation, and that different standards, i.e. with respect to education and information by Lithuanian riders could not be taken into account. Further, and in light of the fact that the PR was a professional rider, it was even more important that he informed himself of the rules and regulations applicable to his profession, and was further obliged to acquire the appropriate translation thereof, if necessary, for his understanding. Further, that it had also to be taken into consideration that he had competed as high as World Cup level, that he owned fifteen horses and was riding other horses.*" The FEI argued that, although it might be the case that the National Federation has not provided their riders with any anti-doping education, the PR could not claim that he did not know about the EADCMRs. It was the responsibility of the PR to know about the rules, and there were several means to find them. Furthermore, that the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. Moreover, that the panel in the CAS decision previously mentioned,

*i.e.*, CAS 2015/A/4190, had stated that the Athlete's Guide "contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form", describing the Athlete's Guide as "required reading". In this respect, the FEI also provided a copy of the Athlete's Guide.

- h) Finally, that making the PR prima facie responsible for the condition of the horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for its doped condition (which the FEI submitted has not been established in the case at hand), was a reasonable and justifiable stance. In this respect, CAS had endorsed – in its decision previously mentioned, *i.e.*, CAS 2015/A/4190 – the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, namely to "... protect the welfare of the horse, and to ensure fair play...".
- i) Pursuant to Article 9 of the EAD Rules, the result of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes.
- j) As fairness did not dictate that no fine be levied in the case at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter.

## **6. Rebuttal submission by the PR**

- 6.1 On 5 May 2016, the PR further stated that he was a victim of the rule violation, and also a victim of the lack of anti-doping education in his country. He now understood what being a "Person Responsible" meant, and what the consequences of being negligent could be.
- 6.2 Regarding how the Prohibited Substances entered the Horse's system, the PR explained that he had kept the Horse in Tehran (a different city from where he lived) where the competitions were held, and that his trainer had taken care of the Horse. That he had learned that his trainer had administered different drugs to the Horse without his knowledge. That this also explained the difference in the Horse's movement and body during the Event, which he had not previously understood. Finally, that he did not have any document(s) that proved that the trainer administered the Prohibited Substances to the Horse.

## **7. Further proceedings**

- 7.1 On 18 May 2016, upon prior request by the PR regarding a possibility to reduce a potential two-year period of Ineligibility, the FEI stated that according to the FEI the positive finding of four different Prohibited Substances, as it was the case in the case at hand, was a

very serious violation. That this was normally a ground for aggravating circumstances and would lead to a sanction of four (4) years period of Ineligibility. However in the case at hand, the FEI was of the opinion that the circumstances in the case at hand, *i.e.*, the PR not having had any anti-doping education, lead to a standard period of Ineligibility of two (2) years. Finally, that it was however up to the Tribunal to decide on the period of Ineligibility to be imposed on the PR.

- 7.2 On 6 June 2016, the PR provided a statement by his trainer, Mr. Ramin Shaki. Mr. Shaki stated that he was an independent trainer, and that his assistant rider, three grooms and one "handyman", Mr. Abas Molaverdi, had been looking after the daily affairs of the horses, including the Horse. That Mr. Molaverdi, who was from Afghanistan like his other grooms, had shown great interest in working with and assisting the veterinarians, and that he had therefore taken care of horses with medical conditions.
- 7.3 With regard to the PR, Mr. Shaki explained that he had been working with the PR, and some of his horses, for a few years. That the PR was not and has never been involved in the day-to-day matters of his horses, such as feeding, vitamins, medications etc. The PR however showed great interest in the well being and happiness of his horses.
- 7.4 Mr. Shaki further explained that, when they arrived at the Event, they noticed that the Horse's left eye was swollen and that the Horse had some scratches on its nostrils. They learned that the Horse had gotten loose and had gotten involved in fights with other horses, due to Mr. Molaverdi's negligence. That in his view Mr. Molaverdi had tried to cover up for his mistakes by administering medicines to the Horse, hoping that it quickly recovered. Finally, he apologised for the mistakes, and he assured to take the necessary steps to ensure better supervision of the work in their club, *i.e.*, where the Horse was stabled.

## **8. Final Hearing**

- 8.1 On request of the PR a hearing took place on 18 July 2016. At the beginning of the hearing the Parties agreed on the undisputed facts, among others that the PR did not claim that he bore No Fault or Negligence for the rule violation. Further, that the purpose of the hearing was to establish sanctions – length of period of Ineligibility and fine - and costs in the case at hand.
- 8.2 To start with - with regard to a potential contradictory submission of who had allegedly administered the Prohibited Substances to the Horse, *i.e.*, the trainer, as per PR submission of 7 February 2016, or Mr. Molaverdi, as per Mr. Shaki's statement of 6 June 2016 - the PR clarified that when he stated that the "trainer" had administered the Prohibited Substances to the Horse, he had referred to the trainer and his staff in general, having had no further information in this respect

at the time.

- 8.3 During the hearing Mr. Shaki explained that he used to ride in Germany and the United States for a long time, and that he was familiar with FEI rules, including the EADCMRs. Further, that he had been training horses on all levels, including for the Asian Games. That he was currently training about fifteen (15) horses, two of those for the PR, including the Horse. That the PR owned another eight (8) horses; his wife took care of those and they were located in the city where the PR lived. That prior to the Event the PR had only competed at 4 to 5 events with the Horse, which had arrived from Europe only around 4 months prior to the Event. The aim for the Event was to just have fun, get experience and get used to bigger events.
- 8.4 Further, that the PR and he only arrived in the morning of the Event, and that Mr. Molaverdi, as head groom, had taken care of the Horse. With regard to the Horse's injury Mr. Shaki explained that he had (only) given the Horse eye drops and that he had done some eye washing. The Horse's injury concerned only a few scratches, and was not one that required medication. Mr. Shaki agreed that the presence of those Prohibited Substances in the Horse's system could therefore not be explained with the Horse's injury. Mr. Shaki explained that a little vet box containing medicines existed. Those medicines were given to horses when needed, and after consulting a veterinarian. He was not aware whether the box also contained anabolic steroids, *i.e.*, Stanozol, but that generally in Iran no permission was needed to have those or similar substances in a vet box. Upon request whether he kept a Logbook for the Horse, Mr. Shaki explained that he kept a calendar registering medications administered to horses, including the Horse. That normally the head groom, *i.e.*, Mr. Molaverdi, and the assistant rider administered substances to horses, and that even though neither he or the PR had expressly given instructions to the grooms in this regard, - according to him - they obviously knew that they were not allowed to administer anything to horses without prior approval by himself or the veterinarian; the grooms had however direct contact with the veterinarian. That the veterinarian just issued a general invoice, and that neither he nor the PR did get into the details of those invoices. However no specific invoice from the veterinarian treating the Horse on this occasion had been received.
- 8.5 With regard to Mr. Molaverdi, Mr. Shaki explained that he had left to return to Afghanistan two weeks after the sampling of the Horse, and prior to the analysis results. That a couple of months later, he had learned that some Prohibited Substances had been administered to the Horse, and that all grooms had known about this. That they tried to investigate further, but that it was hard to prove. Mr. Shaki further explained that generally bets might take place between Afghani grooms, *i.e.*, meaning that grooms might have an interest in good results of certain horses, and thus an incentive to administer Prohibited Substances.
- 8.6 Finally, Mr. Shaki stated that measures have been put in place aiming

to assure that no similar incidents occur in the future. A 24-hour surveillance system had been installed at the stables. It was also planned to lock up medicines, and to no longer provide grooms with access to them.

- 8.7 The PR explained that due to his time constraints he had mostly interacted with Mr. Shaki, and had not been too much involved with the rest of the staff. He had met Mr. Shaki in 2003, and Mr. Shaki had been his trainer from 2003 to 2006, and again since either 2011 or 2012, when he had returned to riding. He interacted with Mr. Shaki on a weekly basis, and Mr. Shaki took care of regular treatments, vaccinations etc. of his horses. That unless there was a serious issue, Mr. Shaki did not inform him of the day-to-day issues with his horses. The PR further stated that prior to the positive finding he had not been informed of the EADCMRs. Through his wife, who – contrary to him – spoke fluent English, he was now aware of the rules. Further, that the IRI-NF has only recently started to educate its members, including riders, with regard to the EADCMRs, and that to date – as far as he was informed – the EADCMRs have not been translated and made available in his language. Finally, the PR explained that he had been planning on moving to Tehran, and to have a private stable for his horses, in order to have better control over his horses, including the Horse. Since the positive finding, changes in personnel have been made, 24-hour video surveillance put in place, and it had been ensured that medications are no longer in the vicinity of people that have no responsibility in this respect. The PR stated that he would do everything in his power to avoid being in the same situation again.
- 8.8 The FEI argued that the explanations of how the Prohibited Substances entered the Horse's system were not entirely clear to the FEI. That from the Veterinary Form 2 it was clear that the Prohibited Substances detected in the Horse's system were in no way related to the injury of the eye of the Horse. That even if the PR was able to establish how the Prohibited Substances entered the Horse's system, no reduction of the standard two-year period of Ineligibility was applicable in the case at hand, as the level of fault and negligence was high. Further, that regardless of who allegedly administered the Prohibited Substances to the Horse, the position of the FEI did not change, as the PR had the responsibility under the EADCMRs to assure that no Prohibited Substances entered the Horse's system. The PR had however not taken any specific steps to comply with his duty. Therefore the level of fault and the level of negligence were both at the upper end of the scale. Furthermore, regardless of whether or not the PR had been familiar with FEI rules at the time of the Event, a basic level of care from his side had been expected. Moreover, the FEI argued that it was aware that behind every athlete there was a team. The PR was however responsible for that team, and that the quality of the team and the care the team gave to the Horse was important. It was further important to have a good supervision in place to ensure that the Horse was not at risk. In the case at hand it was however clear that a serious break down of the supervision of the Horse had occurred on all three levels, *i.e.*, on the PR level, on the trainer level,

and on the level of the team of grooms, including Mr. Molaverdi, who has been alleged to have administered the Prohibited Substances to the Horse. That fault and negligence occurred on all three levels, and that ultimately the person on the top, *i.e.*, the PR, had to assume responsibility of what happened in the case at hand.

- 8.9 Finally, the FEI argued that a clear violation of the rules had occurred, and that the level of fault and negligence in the case at hand was so high, that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years, was possible. Therefore a period of Ineligibility of two (2) years had to be imposed on the PR. Furthermore, given that four (4) Prohibited Substances had been found in the Horse's system a fine of three thousand Swiss Francs (CHF 3'000,-) was adequate. In addition, a reasonable amount on costs occurred, also given that a hearing took place. The FEI suggested that the Tribunal imposes costs in the amount of two thousand Swiss Francs (CHF 2'000,-).
- 8.10 At the end of the Final Hearing both Parties expressly stated that they had a fair and ample opportunity to present their case.

## **9. Jurisdiction**

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

## **10. The Person Responsible**

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.

## **11. The Decision**

- 11.1 As stated in Article 2.1.2 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Stanozolol, 16 Beta Hydroxy-Stanozolol, Flunixin and Dexamethasone in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. Stanozolol is classified as a Banned Substance under the FEI Equine Prohibited Substances List. 16 Beta Hydroxy-Stanozolol is a metabolite of Stanozolol. Flunixin and Dexamethasone are classified as Controlled Medication Substances on the Equine Prohibited Substances List.

- 11.2 The FEI has therefore established an Adverse Analytical Finding for a Banned Substance and its metabolite and for two Controlled Medication Substances (for which no Veterinary Forms exist), and has sufficiently proven the objective elements of an offence in accordance with Article 2.1 of the EAD Rules.
- 11.3 As set forth in Article 10.8.6 of the EAD Rules, where a PR, based on the same factual circumstances, is found to have committed a violation involving both a Controlled Medication Substance under the ECM Rules and a Banned Substance under the EAD Rules, the PR shall be considered to have committed one EAD Rule violation and the sanction shall be based on the Banned Substance that carries the most severe sanction.
- 11.4 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 it is not necessary that intent, fault, negligence or knowing use on the part of the PR be demonstrated in order to establish an EAD Rule violation. Rather the PR has the burden of proving that he bears "No Fault or Negligence" for the positive finding as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Articles 10.4 or 10.5 of the EAD Rules, the person alleged to have committed the Article 2.1 EAD Rules violation, must first establish how the Prohibited Substance(s) entered the horse's system. This element is a "pre-requisite" to the application of Articles 10.4 or 10.5 of the EAD Rules. The standard of proof is that the PR must establish "specific facts or circumstances" "by a balance of probability".
- 11.5 The Tribunal takes note of the explanations by and on behalf of the PR on how the Prohibited Substances entered the Horse's system, namely that Mr. Molaverdi had allegedly administered them to the Horse. The Tribunal holds in this respect that the PR must establish specific facts or circumstances as to how the Prohibited Substances entered the Horse's system. A mere claim that a specific person had administered them to the Horse is not sufficient; the PR has not provided any evidence in this respect. The Tribunal therefore holds that the PR has not established how the Prohibited Substances entered the Horse's system. Accordingly, the Tribunal does not need to address the question of whether the PR has established that he bears No (Significant) Fault or Negligence for the rule violation under Articles 10.4 and 10.5 of the EAD Rules.
- 11.6 However, even if the PR were able to establish how the Prohibited Substances entered the Horse's system, which is not the case, the Tribunal would still find that the PR has not established that he bears "No (Significant) Fault or Negligence" for the rule violation. In this respect the Tribunal holds that – in accordance with Article 2.1 of the EAD Rules - it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any stage. Furthermore – in accordance

with Article 2.1 of the ECM Rules, it is the PR's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. The Tribunal finds that the PR has not established that he had fulfilled the duty of care expected of him as a rider and horse owner: all he did was to rely on Mr. Shaki and his staff without making any further enquiry or taking any other precautionary measures.

- 11.7 In line with its previous decisions, the Tribunal holds that the PR cannot be discharged of this duty – his personal duty as a rider – even when not having been involved with the care and management of the Horse. It is the PR's duty as a competitor to make inquiries whether the Horse was free of Prohibited Substances, and put measures in place to assure that he is informed of all medications administered to the Horse.
- 11.8 Furthermore, the Tribunal holds that – in line with its previous decisions - Persons Responsible are responsible for their Support Personnel and the medical treatment given by them to their horses. In the case at hand the Tribunal finds that under the EADCMRs, the PR has to assume responsibility for the actions taken by the trainer and/or any of its staff. On the account given by the PR and Mr. Shaki, the Tribunal agrees with the FEI that a serious break down of the supervision of the Horse on all three levels occurred. In this respect, the Tribunal finds that responsibilities with regard to the Horse existed on a PR (and owner) level, on a trainer level and on a staff/groom level. In the case at hand the duty of care expected on each level has not been satisfactory. Pursuant to the EADCMRs, the PR – being the person on the top - has to ultimately assume responsibility also for the lower levels, *i.e.*, the trainer and his staff.
- 11.9 Accordingly, the Tribunal finds that the PR's total non-involvement with the care and management of the Horse, resulted in him – as rider and also as owner - being at fault and negligent with regard to the rule violation. Further, his lack of implementing precautionary measures allowed also for a non-fulfilment of the duty of care expected on a trainer and groom level, which responsibilities the PR has to assume in accordance with the EADCMRs. Therefore, the Tribunal comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility can be allowed.

## **12. Disqualification**

For the reasons set forth above, the Tribunal disqualifies the Horse and the PR combination from the Competition and any medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules. The Tribunal is aware from the FEI database that the Horse competed again during the Event, but the FEI has not asked for disqualification from the Event.

### **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.
- 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 Article 2.1 EAD Rule violation. When deciding the fine the Tribunal takes into consideration the Prohibited Substances detected, the level of the Event, and the degree of Fault or Negligence by the PR. Furthermore, the Tribunal takes into account that the PR has not disputed the rule violation, that he was frank about his knowledge with regard to the EADCMRs prior to the positive finding, and that he made best efforts in explaining the case at hand to the Tribunal.
- 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. The period of Provisional Suspension, effective from 16 November 2015, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 15 November 2017**.
  - 2) The PR is fined **two thousand Swiss Francs (CHF 2'000,-)**.
  - 3) The PR shall contribute **two thousand Swiss Francs (CHF 2'000,-)** towards the costs of the judicial procedure.
- 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 10.11.1 of the EAD Rules). Under Article 10.11.3 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 twenty-one (21) 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 "Hodson", is centered on the page. The signature is written in a cursive style with a long, sweeping tail on the final letter.

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**THE CHAIR, Mr. Chris Hodson QC**