



**PARTIAL DECISION
of the FEI TRIBUNAL**

dated 2 February 2018

Positive Anti-Doping Case No.: 2017/BS28

Horse: ADVENTURE E **FEI Passport No:** 104CT35/USA

Person Responsible/NF/ID: Colin Syquia/10040002/PHI

Event/ID: SEA Games-S – Kuang Rawang (MAS)/2017_G-SE.AS_0002_S_S_01

Date: 25 – 28 August 2017

Prohibited Substance: Clomethiazole

I. COMPOSITION OF PANEL

Dr. Armand Leone, 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 with regards to the disqualification of the results, as also made available by and to the PR.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

- 1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23rd edition, effective 29 April 2015 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("EAD Rules"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("VRs"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Colin Syquia

3. Justification for Tribunal finding:

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."

EAD Rules Art. 9: Automatic Disqualification of Individual Results

"9.1 A violation of these *EAD Rules* in connection with a test in a given *Competition* automatically leads to the *Disqualification* of the result of the *Person Responsible* and *Horse* combination obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any related medals, points and prizes. Where applicable, consequences to teams are detailed in Article 11 below.

Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or elimination shall under no circumstances reverse the automatic Disqualification of Individual Results mandated by this Article 9.

9.2 In circumstances where the *Person Responsible* and *Owner* are informed of an *Adverse Analytical Finding* in accordance with Article 7.1 and

- (i) the B *Sample* analysis confirms the A *Sample* analysis; or
- (ii) the right to request the analysis of the B *Sample* is not exercised; and
- (iii) where requested by the FEI and/or the Person Responsible,

the matter will be submitted to the *FEI Tribunal* who shall decide whether or not to apply Article 9.1 at that stage of the proceedings."

EAD Rules Art. 11: Consequences to Teams

"11.1 Unless otherwise provided in the FEI Regulations for Equestrian Events at the Olympic or Paralympic Games, the Consequences to teams set forth below will apply.

11.1.1 At the Olympic Games, Paralympic Games, *FEI World Equestrian Games*: If a member of a team is found to have committed a violation of these *EAD Rules* during an *Event*, the results of the *Person Responsible* will be *Disqualified* in all *Competitions* and the entire team *Disqualified*.

11.1.2 At all other *Events* than those listed above: If a member of a team is found to have committed a violation of these *EAD Rules* during an *Event* where a team ranking is based on the addition of individual results, the results of the *Person Responsible* may be *Disqualified* in all Competitions and will be subtracted from the team result, to be replaced with the results of the next applicable team member. If by removing the *Person Responsible's* results from the team results, the number of *Athletes* counting for the team is less than the required number, the team shall be eliminated from the ranking.

11.2 Notwithstanding the above, for all Events, including but not limited to the Olympic and Paralympic Games, exceptional circumstances may be considered."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced with regard to the disqualification of results from the event in question. 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 ADVENTURE E (the "**Horse**") participated at the SEA Games-S in Kuang Rawang, Malaysia, from 25 to 28 August 2017 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Colin Syquia 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 28 August 2017.
- 1.3 Analysis of urine and blood sample no. 5558083 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club (HKJC) Racing Laboratory (the "**Laboratory**"). The analysis of the urine sample revealed the presence of Clomethiazole.
- 1.4 The Prohibited Substance detected is Clomethiazole. Clomethiazole is a sedative used in the treatment of agitation and restlessness and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Clomethiazole in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 21 September 2017, the FEI Legal Department officially notified the PR, through the National Federation of the Philippines ("**PHI-NF**"), as well as the Owner of the Horse, 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.
- 2.2 The Notification Letter further included notice that, in accordance with Article 7.4.1 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 21 September 2017, until 20 November 2017. 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 21 September 2017, the PR and the Owner of the Horse were also informed that they were 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 20 November 2017, the FEI informed the PR and the Owner of the Horse of the results of the B-Sample analysis, which has been conducted in a different FEI approved laboratory, the LGC Laboratory, UK. The B-Sample analysis confirmed the results of the A-Sample analysis.

4. Preliminary Decision

- 4.1 On 18 October 2017, upon prior request for a lifting of the Provisional Suspension of the PR by the PR, the Preliminary Hearing Panel decided to maintain the Provisional Suspension of the PR, as the requirements for a lifting of the Provisional Suspension, in accordance with 7.4.4 of the EAD Rules, had not been met at the time.
- 4.2 Regarding the PR's submission that an EAD Rule violation had been committed has no reasonable prospect of being upheld, the Preliminary Hearing Panel decided as follows:

"(...) 4.6 The PR has therefore to establish by a balance of probability that a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy occurred. In a second step, where such departure has been established, the PR has to establish by a balance of probability that such departure could reasonably have caused the AAF.

4.7 As the case stands at present, the Preliminary Hearing Panel however finds that the PR has so far not established by a balance of probability a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy. The Preliminary Hearing Panel has taken note of the PR's explanations with regard to the sampling conditions and timing of the notification. The PR has however – so far in the proceedings - not provided any evidence in this regard.

4.8 Even if the Preliminary Hearing Panel would find – which is not the case in the case at hand – that there was a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy, the burden would then still lay with the PR to establish that such departure could reasonably have caused the AAF.

4.9 As a result of the foregoing, and based on the arguments presented during the Preliminary Hearing, the Preliminary Hearing Panel finds that the PR has not established a material defect in the evidence on which the alleged Anti-Doping Rule violation is based or any reason for which the allegation would have no reasonable prospect of being

upheld.”

5. Proceedings regarding the Disqualification of Results

- 5.1 On 15 January 2018, the FEI requested the Automatic Disqualification of Results in accordance with Article 9 of the EAD Rules (the “**Request**”). Together with its request the FEI provided a submission by the PR related to the Request, dated 8 December 2018.
- 5.2 On 17 January 2018, the Tribunal requested the FEI to provide it with specific reasons for requesting a Partial Decision regarding the Automatic Disqualification of Results – in accordance with Article 9.2 of the EAD Rules - at this point in time in the proceedings, *i.e.*, prior to the Final Decision in the case at hand.
- 5.3 On the same day the FEI provided further explanations with regard to the Request.
- 5.4 On 18 January 2018, the PR responded to the further explanations provided by the FEI.
- 5.5 On 23 January 2018, the FEI Tribunal Chair appointed a Panel for the case at hand. Both Parties expressly declared not having any objection with regard to the constitution of the Panel.

6. FEI submissions

- 6.1 In essence the FEI requested the Automatic Disqualification in accordance with Article 9 of the EADCMRs in relation to the results of the PR and the Horse and the Event.
- 6.2 The FEI argued that since the B-Sample analysis had been performed, the FEI requested the Tribunal to rule on the automatic disqualification of the results of the PR and the Horse pursuant to Article 7.1.4 (f) of the EAD Rules.
- 6.3 Furthermore, the FEI explained that the South Asian Games (also known as SEA Games) were under the regulation of the Southeast Asian Games Federation, and not governed by the FEI, except from the part that the equine competitions and testing was run under FEI rules. According to the results provided by the FEI, the PR and the Horse placed first as individuals and second with the team. The FEI further stated that the Southeast Asian Games Federation and the whole community had specifically asked the FEI to act on the disqualification of the positive equine case, since they would like to have the redistribution of medals as soon as possible.
- 6.4 Moreover, the FEI argued, that once an EAD Rule violation in connection with a test in a given Competition has been established, as set forth in

Article 9 of the EAD Rules, this leads to the automatic disqualification of the result of the PR and Horse combination obtained in that Competition with all resulting consequences, including forfeiture of any related medals, points and prizes.

- 6.5 Finally, the FEI argued that the FEI found it important to disqualify the results in such cases where medals for major events were at stake as soon as possible, in order to safeguard the level playing field and reputation of equestrian sport.

7. PR submissions

- 7.1 The PR in essence requested the Tribunal to reject the Request and to decide on the matter of disqualification of the results in the context of the final decision, and in any event not before the PR has been able to properly illustrate his case, which meant not before a hearing was held.
- 7.2 To start with, the PR argued that Article 9.2 of the EAD Rules explicitly provides for a discretionary power of the Tribunal in deciding whether or not to apply Article 9.1 of the EAD Rules prior to the final decision in a given case.
- 7.3 The PR submitted that disqualifying his results before the end of the anti-doping proceedings would be a grave violation of the principle of presumption of innocence, which under Swiss law also applied by analogy to penalties imposed by an association. In addition, sanctions at this point in the proceedings would be unfair and against the general principle of proportionality.
- 7.4 In the view of the PR there were no valid reasons in the present matter which would justify such a serious violation of these basic law principles. While the PR understood that the Games were important to the FEI, it was pivotal, at this stage of the proceedings, to safeguard the PR's rights, and there existed no compelling reasons for the Tribunal to rush its decision without being aware of the facts of the case and the PR's arguments, especially considering the fact that the consequences of such decision were extremely harsh and non-reversible.
- 7.5 In this respect, the PR explained that the Provisional Suspension imposed on him had severe effects on both his psychological and financial situation, and that he had lost his main sponsor. Disqualifying the results would further damage his reputation.
- 7.6 Moreover, the PR argued that it was possible that the Adverse Analytical Finding (the "**AAF**") was directly caused by a violation of an FEI Regulation – *inter alia*, the lax security – committed by the organisers of the SEA Games themselves. This was also supported by various complaints about the event organisation which had been filed by third parties, among others, even by individuals who would benefit from a disqualification of the PR.

- 7.7 Moreover, the PR argued that – for example – he was notified of the testing of the Horse forty-five (45) minutes after announcement of the final results of the competition, whereas the rules clearly required such notification within thirty (30) minutes and that during this timeframe the Horse was not protected against dangerous contact with unauthorized persons; Article 1058(1)(a) of the VRs could not apply in the case at hand and with regard to the type of the event.
- 7.8 In this respect the PR also argued that the case at hand was different from the case 2013/BS07 – referred to by the FEI – since contrary to that case, in the case at hand it was still in dispute whether – in addition to the fact that the PR bore No Fault or Negligence – the AAF should be completely invalidated.
- 7.9 Finally, the PR explained that the precise circumstances of the case remained so far in the dark, and informed that experts were currently assessing possible scenarios with regard to the chemical side of Clomethiazole.

8. Jurisdiction

- 8.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules. More specifically, under Article 9.2 of the EAD Rules, in circumstances where the PR and Owner are informed of an AAF and the B-Sample confirms the A-Sample analysis - as it is the case in the case at hand – the Tribunal shall decide whether or not to apply Article 9.1 of the EAD Rules, *i.e.*, the Automatic Disqualification of Individual Results, at that stage of the proceedings.
- 8.2 In addition, pursuant to Article 18.10 of the IRs, the Hearing Panel may resolve issues that are not specifically provided for in the Procedural Rules of the FEI Tribunal, *i.e.*, the IRs, in a manner that achieves fair, consistent, and expeditious resolution of the matter.

9. 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.

10. The Decision

- 10.1 The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Clomethiazole. The PR did not contest the accuracy of the test results or the positive findings. Clomethiazole is classified as a Banned Substance under the Equine Prohibited

Substances List.

- 10.2 The PR did however claim that it was possible in the case at hand that the AAF was directly caused by a violation of an FEI Regulation. However, the Tribunal finds that the PR has – thus far, and even following the Preliminary Decision of the Preliminary Hearing Panel – not provided any evidence in this respect. The mere possibility that a violation of an FEI regulation was the cause of the AAF does not establish how the Banned Substance probably entered the horse's body. Similarly, in the absence of showing how the Banned Substance probably entered the horse's body, there is no basis to support a claim of extraordinary circumstances.
- 10.3 As a result the Tribunal finds that, based on the competent evidence currently before it, an EAD Rule violation, *i.e.*, the presence of a Banned Substance in the Horse's system, has been established.
- 10.4 The Tribunal therefore finds that the conditions of Article 9.2 of the EAD Rules, *i.e.*, that the B-Sample analysis confirms the A-Sample analysis, are fulfilled. Accordingly, the pre-requisite for the Automatic Disqualification of the Individual Results, *i.e.*, a violation of the EAD Rules, has also been established.
- 10.5 From the foregoing, together with the Hearing Panel's authority to resolve issues not specifically provided for in the IRs, in a manner that achieves fair, consistent, and expeditious resolution of the matter, the Tribunal finds that it shall apply Article 9.2 of the EAD Rules, and thus Article 9.1 of the EAD Rules at this point in the proceedings.
- 10.6 Taking into consideration the importance of maintaining a level playing field and the substantial prejudice to the other competitors if the results are not corrected at this point in time, the Tribunal indeed finds that it is both fair and consistent with previous findings by the Tribunal to disqualify the results at this point in the proceedings, in order to allow for the medals to be re-distributed accordingly.
- 10.7 Furthermore, given the foregoing, and in order to find an expeditious resolution of the matter, the Tribunal finds that an oral hearing with regard to disqualification of results is not necessary. Both Parties have been provided with the opportunity to present their positions regarding the disqualification of the results based on the AAF.
- 10.8 The Tribunal is therefore 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.
- 10.9 In addition, the Tribunal finds that in accordance with Article 11.1.2 of the EAD Rules the results of the PR shall be subtracted from the team result.
- 10.10 Finally, the Tribunal does not find that any exceptional circumstances are to be considered in the case at hand.

10.11 A fully reasoned Final Decision, including a finding on sanctions and costs, shall be issued at the end of the proceedings, pursuant to Article 19.45 of the IRs.

10.12 This Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Armand L".

THE CHAIR, Dr. Armand Leone