



DECISION of the FEI TRIBUNAL

dated 8 November 2007

Positive Medication Case No.: 2007/33

Horse: STATFORD NOVALIS **FEI Passport No:** AUS01853

Person Responsible: Mr Shane Rose

Event: CCI 2* Hong Kong (HKG), 11-13.08.2007

Prohibited Substance: Pentobarbital

1. COMPOSITION OF PANEL

Mr Erik Elstad
Mr Philip O'Connor
Mr Pierre Ketterer

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

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

2.3 Oral hearing: Held on 5 November 2007.

Present: The FEI Tribunal Panel

For the FEI:

Alexander McLin, General Counsel
Fiona Paratte, FEI Legal Assistant

For the PR:

Shane Rose, Person Responsible
Franz Venhaus, Secretary General of the Australian
Equestrian Federation

Witness by telephone:

Dr. Denis Goulding

2.4 At the commencement of the hearing the Chairman stated that a reference by Dr Frits Sluyter to quantity in his letter dated 24 October 2007 would be ignored by the Panel and put aside. See paragraph 4.1 (o).

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 22nd edition, effective 15 April 2007, ("**Statutes**"), Arts. 1.4, 34 and 37.

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

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

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"), effective 1 June 2007.

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

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mr Shane Rose

3.3 Justification for sanction:

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

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

4. DECISION

4.1 Consideration of the evidence:

- (a) STATFORD NOVALIS (the "**Horse**") participated at CCI 2* Hong Kong, from 11 to 13 August 2007 (the "**Event**"). The Event was also called "Good Luck Beijing – Hong Kong SAR 10th Anniversary Cup" and was a test event for the Olympic Games in 2008. The Horse was ridden by Mr Shane Rose who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- (b) The Horse was selected for sampling on 13 August 2007. Analysis of the blood sample no. 0028192 taken from the Horse and performed by the approved laboratory of the FEI, the Racing Laboratory, the Hong Kong Jockey Club, in Hong Kong, revealed the presence of pentobarbital (Test Report of Analysis 07-0807 dated 20 August 2007).

- (c) On 11 September 2007 the PR submitted a request for a confirmatory analysis. The confirmatory analysis was carried out on blood at the Racing Laboratory, Hong Kong Jockey Club, on 14 September 2007 under the supervision of Dr Kwok Wai Him and Dr Emmie N M Ho, and was witnessed by Mr Edmund Shek, Security Operations Manager at The Hong Kong Jockey Club, at the request of the PR. It confirmed the presence of pentobarbital (Test Report 07-0919 dated 18 September 2007).
- (d) The substance is a barbiturate with hypnotic and sedative properties. Pentobarbital is mostly known as a drug for euthanasia of small animals. It also has a depressive effect on the central nervous system (FEI Veterinary Department's Statement dated 29 August 2007). The substance is specified in the Equine Prohibited List (VR Annex III) as a "Doping" Prohibited Substance.
- (e) The FEI Tribunal is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of the laboratory are accurate. The FEI Tribunal is satisfied that the test results show the presence of the Prohibited Substance. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCRs Article 3.
- (f) The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. The PR has the opportunity to seek to rebut this presumption, in accordance with EADMCRs Article 10.5.
- (g) In his explanation to the Tribunal, the PR explained that he is 34 years old and has been a professional rider since 1990. He has always loved working with horses and has represented Australia in several international competitions, among them World Equestrian Games in 1998 and 2006. The CCI 2* Event in Hong Kong was a test event before the Olympic Games and he went there together with another competitor from Australia. They brought only two horses. One of them was Statford Novalis, which is a "2-star" horse. The aim of their participation at the Event was not to win, but to use the Event to experience any problems they may encounter during the upcoming Olympic Games. They wanted to check the facilities around the competition grounds and the conditions for the horses which are competing at the Event. This was especially necessary as a result of the extreme conditions, as Hong Kong is known to have very warm and humid weather with 90 – 100 % humidity.
- (h) The PR also explained that his horse, Statford Novalis, a stallion, is by nature a very placid horse. There has not ever been a need to contemplate the administration of any medication or other substances to calm him in any way. During the cross-country phase of the event, his horse got very tired. On that day it was raining, with very high humidity. He managed to get his horse through, and did not use spurs on the horse, but after the finishing line the horse stopped and refused to go further to the cooling tent.

After having been watered, the horse recovered quite well. The PR was called to the Ground Jury "GJ" after the round in order to give the GJ his explanation concerning a report of excessive use of spurs and pushing a tired horse. He explained to the GJ that his horse is a very laid-back horse, unresponsive to leg. He had not used spurs on the horse, but he had to encourage the horse. The Ground Jury accepted his explanation about the horse and his riding, but nevertheless gave him a verbal warning.

- (i) Mr Franz Venhaus, Secretary General of the Australian NF explained to the Panel that the Horse was under supervision of the Australian Team Management and the Australian Team Veterinarian. Except for the administration of fluids after the cross-country test, all veterinary treatment was administered by the Team Veterinarian or under his supervision. The Australian Team is under strict instructions in respect of the use of medications and drugs. These instructions include the FEI and EFA, EADMC, Rules of the Australian Olympic Committee, the Australian Sports Commission and the Australian Sports Anti-Doping Authority. The Australian Equestrian Sport is known to be a clean sport, and this case affects therefore also the Australian NF and its relationship with the Australian Government.
- (j) The PR stated that he knows that he is legally responsible for the Horse and this doping case, but he has no knowledge of how the Prohibited Substance can have come into the horse's body fluids. There was no reason to administer this kind of substance to the Horse. It has been pointed out that the stable security at the Event was not sufficient. Because this was a test event for the Olympic Games, there were a lot of people who had access to the stables and went through the stables at all times. A number of people who could access the stables and were present at the stables could have led to inadvertent or deliberate contamination.
- (k) The PR and the Team Veterinarian conducted research in order to find a possible explanation to the positive findings. The content of an almost empty jar of "Ranvet Electrolytes" was sent for analysis at the Hong Kong Jockey Club, and according to a test report (07-0982A) dated 28 September the analysis showed the presence of pentobarbital. Another electrolyte product, a paste, showed the presence of pentobarbital (Test report 07-0983A dated 28 September 2007).
- (l) The PR has explained that at the Event his Horse was given electrolytes because of the heat. The PR did not bring with him the electrolytes that he normally uses for his Horse, but both the Australian horses were given the same electrolytes that the PR's team-mate Megan Jones had brought with her to the competition. This had been purchased in a new sealed tub, at a trade shop in Australia before leaving for Hong Kong. It was the contents of this jar of electrolytes that proved positive for pentobarbital in the subsequent analysis. The product is a powder and is given to horses mixed with feed. During the period in Hong Kong numerous blood and urine samples were taken from both horses to investigate electrolyte values. As a result of changing values, the Team Veterinarian advised the grooms to increase salt additives.

- (m) Pentobarbital is most commonly used for euthanasia of animals, mostly small animals, but also horses together with other substances. It is a barbiturate with sedative effects. For humans it has been used in sleeping pills, but has not been registered in Australia since 1996. The substance is an old drug that is difficult to dose for horses. The PR has explained that no equine veterinarian would even consider its administration in a competition horse. It may be used for anaesthesia and euthanasia in cocktails of drugs prepared for these purposes. The PR has put forward several declarations from experts who confirm his explanation about the use of pentobarbital for horses, among them declarations from Senior Official Veterinarian of the Veterinary Department of Racing NSW, Dr John H. Vine, Laboratory Director of Racing Analytical, Dr Vincent Roche and Dr Warwick Vale, Midland Bullsbrook Veterinary Services.
- (n) Pentobarbital has not been reported in FEI testing previously according to a statement dated 24 October 2007 from Dr Frits Sluyter, Head of the FEI Veterinary Department. In his statement, he says that "this does not mean that the substance could not have been administered to the horse; however, it increases the odds that some type of contamination is at the root of this finding".
- (o) The PR made a request for quantification of the substance to be performed on the test sample. The FEI answered to this in an e-mail dated 13 September 2007 that this is not a threshold substance and there is therefore no need to quantify the substance. In his statement dated 24 October 2007, Dr Sluyter nevertheless mentioned quantities. Given the answer the PR got from the FEI about quantifications, the panel decided to ignore the second last paragraph of Dr Sluyter's statement.
- (p) The Team Veterinarian, Dr Denis J. Goulding, who has held this position since 1988, has stated that he did not bring pentobarbital or any barbiturates related to it to the Event. The equipment that he had in the stable was his stethoscope, hoof knife and hoof testers. These three instruments came from his car parked in Australia before going to Hong Kong, where they have been carried in a large tray that also contained Lethobarb (Pentobarbital) solution. He suggested that it may have been possible, through leakage, that these instruments became contaminated with the solution. This equipment was used on both the Australian horses, the stethoscope especially, and the hoof testers on Megan Jones's horse just before they left for Hong Kong around feeding time. Ms Jones' groom has handled this equipment around this time of feeding and some of the pentobarbital crystals may have slipped into the salts hence the contamination of the horse Statford Novalis.
- (q) The PR has strongly argued that he bears no fault or no negligence for the violation and that any period of ineligibility and all other sanctions (including disqualification) should be eliminated according to EADMCR Art. 10.5.1. If the Tribunal does not accept that he has met the test under Art. 10.5.1, the alternative he seeks is to reduce any period of ineligibility and all other sanctions (including disqualification) in that he bears "no significant fault and no significant negligence" under Art. 10.5.2. This must be established viewed in the totality of the circumstances of the case.

4.2 The Tribunal's decision:

- (r) There has been a breach of the EADMCRs, by the PR Shane Rose riding Statford Novalis at CCI 2* Hong Kong, 11-13 August 2007. The FEI has established sufficient proof that an anti-doping rule violation has occurred when the horse proved positive for the Prohibited Substance pentobarbital. The analysis results on samples A and B showing the presence of Pentobarbital are accepted by the PR and by the Tribunal.
- (s) The Tribunal accepts as a probability the explanation put forward by the PR as to contamination in certain foodstuffs fed to the horse during the event.
- (t) The Tribunal finds that the lack of stringent controls over foodstuffs was to a degree negligent; thus Art. 10.5.1, which refers to circumstances where there is "No Fault and No Negligence", is not applicable. The Tribunal also refers to the definition of "No Fault or No Negligence" in the EADMCR and the relevant standard of care that the PR must demonstrate as having been met, namely one of an "exercise of utmost caution". This kind of contamination should not occur in a competition of this level, and indeed the presence of evidence to the contrary belies a certain negligence by the PR under this stringent standard.
- (u) The Tribunal relies upon Art 10.5.2 and finds that there was no significant fault and no significant negligence, and further accepts the contamination mentioned in paragraph 4 above for the purpose of compliance with the requirement contained in Art. 10.5.2, under which the PR must establish how the Prohibited Substance entered into the system of the horse.
- (v) In determining the ultimate sanction, the Panel took into consideration the totality of circumstances, including the level and nature of the event, the experience of the PR, the explanations given, quantity and quality of the evidence and testimony provided through statements, the nature of the substance itself, and the degree of negligence of the PR, which it deemed to be slight but nevertheless present.
- (w) The Tribunal gratefully acknowledges the cooperation of the PR and the assistance of Mr Franz Venhaus, CEO, Equestrian Federation of Australia, in resolving this difficult matter.

4.3 Disqualification

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

4.4 Sanctions

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

- 1) The PR shall be suspended for a period of one (1) month to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier of the appeal is waived in the writing by or on behalf of the PR.
- 2) The PR shall pay a contribution of CHF 1'250.- towards legal costs and shall pay CHF 750.- in respect of the analysis of the B sample.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

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

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

5.4 Any other: No

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 8 November 2007

Signature: 