



DECISION of the FEI TRIBUNAL

dated 12 February 2008

Positive Medication Case No.: 2007/39

Horse: LV INTEGRITY

FEI Passport No: USA084374

Person Responsible: Mrs Joyce Sousa, USA

Event: CEI 3* Oreana, USA, 23-25 August 2007

Prohibited Substance:

Salicylic Acid

1. COMPOSITION OF PANEL

Mr Erik Elstad
Mr Pierre Ketterer
Mr Philip O'Connor

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

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

2.3 Oral hearing: None, by correspondence.

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**").

The Equine Anti-Doping and Medication Rules ("**EADMCRs**"),

effective 1 June 2006.

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

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Mrs Joyce Sousa

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. LV Integrity (the "**Horse**") participated in CEI 3* Oreana, in the USA, from 23 to 25 August 2007 (the "**Event**"). The Horse was ridden by Mrs Joyce Sousa who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 25 August 2007. Analysis of the blood sample no. FEI-G19737 taken from the Horse performed by the Equine Drug Testing and Research Laboratory ("**EDTRL**"), in the USA, revealed the presence of Salicylic Acid (Analysis Report FEI G19737 dated 11 September 2007).
- c. Salicylic Acid is a Non-Steroidal Anti-Inflammatory Drug (NSAID)(Veterinary Department's Statement dated 1 October 2007) used as an analgesic and anti-inflammatory and accordingly is a substance specified in the second section of the Equine Prohibited List (VR Annex III) as "Medication Class A" Prohibited Substance.
- d. Further to receipt of the A sample result on 26 September 2007, the FEI Legal Department, pursuant to established procedure for cases including this substance, provided the PR, through her NF, on 3 October 2007, with the opportunity to accept administrative sanctions including:

- 1.1 "Disqualification from the event and forfeiture of all prizes and prize money won at the event with the horse in question; and
 - 1.2 Fine of CHF 1'000.- and
 - 1.3 Costs of CHF 500.-."
- e. A confirmatory analysis has not been timely and properly requested by or on behalf of the PR.
 - f. The establishment of the objective elements of a medication control violation for Medication Class A Prohibited Substances is subject to the consequences listed in Art. 10.2 EADMCRs.
 - g. EADMCRs Art. 10.2 provides for a suspension of up to one (1) year for Medication Class A Prohibited Substances. A fine of up to CHF 15'000.- may also be imposed.
 - h. The administrative sanctioning process has been established for Prohibited Substances having a lower potential to affect the performance of the horse, when it is a first offence and not a Major Event. The PR has the option to accept the administrative sanction provided by the FEI which enables her to resolve the matter quickly and without a suspension. When the PR decides not to take advantage of this simple process and the case is submitted to the Tribunal, the Tribunal must decide the case according to the normal procedure, as has been notified to the PR. The benefit of the doubt given to the PR through the administrative sanction is no longer applicable.
 - i. 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 eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that she bears no fault and no negligence or no significant fault and no significant negligence, in accordance with EADMCRs Article 10.5.
 - j. In her explanation dated 15 October 2007, the PR states that she has been involved in FEI events for 10 years as an amateur and her horses have been drug tested countless times between AERC and FEI events, this test being the first time she receives a positive finding.
 - k. She explains that on 19 August 2007, the Horse had a fresh open bleeding lesion on his right hind leg. The PR cleaned it off and applied A&D ointment before wrapping the leg and this on a daily basis until the ride. On the competition day, the lesion was left open with no topical on it as the PR did not want dirt and debris adhering to the wound. After the ride, as the lesion had reopened, it was cleaned off and A&D ointment was applied

before the leg was iced. No drug was given to the Horse.

- l. At 11.00pm, the PR's husband took the Horse to the veterinarian official for the two hour post ride wellness check. The Horse was found to be fine and released at around 11.30pm. The PR's husband noticed at that point that there were a lot of little insects that were bothering the Horse so he applied Tri-Care 3-Way Wound Treatment over the lesion because it was still raw and open. The PR and her husband had been using this new ointment as a topical for nicks and small abrasions to keep insects off since the summer. They discovered later that one of the ingredients of Tri Care 3-Way Wound Treatment is Salicylic Acid.
- m. At 1.00am the same night, the Horse was tested and blood was sampled. In the morning, the Horse was shown for the Best Condition Award. According to the Rules for Endurance Events Article 831.2, "*Horses which enter the Best Condition Award are deemed to be still in the competition until after the prize giving ceremony for the Best Condition Award*". Therefore, the Horse was still in the competition when it was tested.
- n. The PR assures that had she known that the ointment administered to the Horse would test positive she would have disclosed it to the Veterinary Official and never shown the Horse for a Best Condition Award.
- o. In his statement, Dr Frits Sluyter, Head of the Veterinary Department of the FEI, stated that the use of ointments such as Tri Care may be a possible explanation for the positive test result. He highlighted that "*One of the conditions for participating in the best condition competition is that the horse is not receiving any treatment*" but that to his knowledge no attempt was made to communicate on the issue of the treatment with the Veterinary Official.
- p. The Tribunal accepts the explanation for the positive findings provided by the PR and admits that the PR has succeeded in rebutting the presumption of guilt. But the FEI Tribunal has repeatedly expressed the view that it is the responsibility of the competitors to ensure that their horses do not compete with any prohibited substance in their system. It is the PR's responsibility, even if the substance is administered by any of the staff taking care of her Horse on her behalf.
- q. The PR has in her letter of 16 October 2007 mentioned her wrong doing in this matter and has asked for a Fast Track decision in the case. She did not sign the Acceptance Letter that was forwarded to her by a Notification Letter dated 3 October 2007. In an e-mail to her National Federation, the FEI asked if she was going to sign the Acceptance Letter. The NF replied that she was not accepting the administrative sanctions.

- r. In a Fax dated 21 December 2007, the PR was given a last chance to accept the administrative sanctions. The time limit was 4 January 2008. After this date the case has been submitted to the FEI Tribunal for its decision, according to the EADMCRs.
- s. The PR has signed the Acceptance Letter on 29 January 2008, which was received by the FEI on 31 January 2008. This was after the deadlines set by the FEI. On the other hand, the PR had already asked for a Fast Track decision in her letter dated 16 October 2007 which means that she has admitted that she was responsible and had to accept sanctions for her wrong doing. Since the case had already been forwarded to the Tribunal, it has been decided by the panel in this case.
- t. In deciding the sanctions the FEI Tribunal considered, on the one hand, the medication control violation and type of substance involved and, on the other hand, the level of the Event and the fact that this offence is typically subject to administrative sanctions. The Tribunal takes into consideration that the PR at an early stage asked for an administrative sanction, but did not follow up with signing the Acceptance Letter. She has had several opportunities to do so, and the Acceptance Letter has been signed later as mentioned above. The Tribunal finds it acceptable in this special case not to give any suspension as it was offered in the Administrative Sanctioning Process, but because the acceptance came after the case had been forwarded to the Tribunal, it will have implications to the costs.

4.2 Disqualification

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

4.3 Sanctions

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

- 1) The PR is fined **CHF 1'000.-**.
- 2) The PR shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure.

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 : 12 February 2008

Signature: 