



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 22 March 2007

Positive Medication Case No.: 2006/55

Horse: ESCUDO FOX

FEI Passport No: AUT05332

Persons Responsible: Ms Julia Nöbauer, AUT
Ms Sissi Jarz, AUT

Event: CH-M-V-Ind. Fem. WEG-V Aachen GER August 2006

Prohibited Substances:

2-(1-Hydroxyethyl) Promazine and
2-(1-Hydroxyethyl) 7-Hydroxy-Promazine

1. COMPOSITION OF PANEL

Mr Ken E. Lalo
Mr Erik Elstad
Mr Leonidas C. Georgopoulos

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: by Legal Department.

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

2.3 Oral hearing: In Lausanne on 20 February 2007.

Present: The Judicial Committee Panel

For the FEI:

Alexander McLin, General Counsel

Laetitia Zumbrunnen, Legal Counsel

Dr Frans J. ter Beek, Veterinarian (over the telephone and only for the duration of providing the testimony)

Dr Frits Sluyter, Head of the FEI Veterinary Department (only for the duration of providing the testimony)

For the PRs:

Ms Julia Nöbauer, Person Responsible
Ms Sissi Jarz, Person Responsible
Mr Erich Breiter, Chef d'Equipe Austrian Team
Mr Stefan Nöbauer, Ms Julia Nöbauer's father (accompanying Ms Nöbauer)
Dr Peter Zebisch, Veterinarian (over the telephone and only for the duration of providing the testimony)

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 21st edition, revision effective May 2006, ("**Statutes**"), Arts. 001.6, 057 and 058.

General Regulations ("**GR**"), 21st edition, effective 1 June 2006, Arts. 142, 146.1 and 174.

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).

Rules for Vaulting Events, 6th edition, effective 1 January 2005, as amended 1 January 2006. ("**Vaulting Rules**").

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Ms Julia Nöbauer Ms Sissi Jarz

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 Factual Background

1. Escudo Fox (the "**Horse**") participated in the Vaulting Competitions at the World Equestrian Games, CH-M-V-Ind. Fem. WEG-V Aachen Germany during August 2006 (the "**Event**"). At the Event the Horse was lunged by Ms Julia Nöbauer (the "**Lunger**") and was ridden by the vaulter Ms Sissi Jarz (the "**Vaulter**") (the Lunger and the Vaulter, together are the "**PRs**").
2. The Horse was selected for sampling on 26 August 2006. Analysis of the urine sample no. FEI-0012514 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques, France ("LCH"), revealed the presence of 2-(1-Hydroxyethyl) Promazine and 2-(1-Hydroxyethyl) 7-Hydroxy-Promazine (Certificate of Analysis 0012514 dated 12 September 2006).
3. Upon a request submitted on behalf of the PRs, a confirmatory analysis was carried out at LCH. It confirmed the presence of 2-(1-Hydroxyethyl) Promazine and 2-(1-Hydroxyethyl) 7-Hydroxy-Promazine (Counter-Analysis Report dated 23 November 2006).
4. The substances are metabolites of Acepromazine. Acepromazine is a tranquilizer (Certificate of Analysis 0012514 dated 12 September 2006). These substances are accordingly prohibited substances specified in the Equine Prohibited List (VR Annex III) as "Medication Class A" Prohibited Substances.
5. Dr Sluyter, testifying on behalf of the FEI, stated that Acepromazine was a frequently used sedative for horses, used to calm horses being clipped, whose teeth are being cared for, during transportation and in many other instances. It is a relatively cheap and, therefore, popular substance. Dr Sluyter testified that, on the other hand, Acepromazine was an unpredictable substance as far as detection times, and therefore prudent competitors would declare its administration at an event.

4.2 The Persons Responsible

6. Under a revision to GR Article 142.3 effective 1 June 2006, in Vaulting "[t]he Person Responsible shall be the competitor who rides or drives the horse during an event, [...]. In vaulting, the lunger shall be an additional Person Responsible.". Therefore, both the Lunger and the Vaulter in Vaulting events in general and in this case in particular are the persons responsible.

4.3 The Sampling Procedures - Notification

7. In their written submissions and the testimonies at the hearing, the PRs claimed that the sampling procedures were invalid as it had not been established that the sampling procedures were executed according to VR Article 1018. The PRs highlighted that the Veterinary Regulations required strict adherence to the sampling procedures.
8. The Vaultier testified that she had neither been informed nor been made aware of the sampling until the sampling process was completed. The Vaultier was, therefore, not present during the entire sampling process. The Vaultier testified that following the exercise she was present at the “kiss and cry” area, together with Mr Erich Breiter, Chef d'Equipe of the Austrian Team, waiting for the results. The Vaultier claimed that, had she been advised, she would have been available to attend the doping test.
9. The Lunger testified that at the end of the exercise with the Vaultier and the Horse, she immediately changed clothes and continued to lunge another horse with the next Vaultier. She heard about the sampling of the Horse only following completion of the next exercise and immediately went to the testing box, where she witnessed that the sampling has already begun. The sampling kit had already been opened and used, and the testing was in progress.
10. The FEI argued that by signing the FEI Medication Control Form (the “**Form**”) without any reservation, the Lunger certified that she witnessed the collection and the sealing of the samples and therefore agreed that the sampling procedure was executed according to the regulations of Art.1019 VR. The Lunger testified that she had signed the Form not realising that she had the option to indicate her comments and suspected irregularities on the Form (as she did the following day when another horse was tested), and that she felt pressured to sign the Form. The Judicial Committee is, therefore, not basing its decision solely on the content of the Form and has duly considered the Lunger's testimony.
11. Mr Breiter testified that he was at the “kiss and cry” area with the Vaultier awaiting the result of the exercise performed by the Vaultier on the Horse, when someone in an official dress approached him and indicated that the Horse was being escorted to the testing box for a doping test. Mr. Breiter indicated that he did not view this as an official announcement of a dope test and that he did not advise the Lunger, as she was preparing to lunge the next horse, and did not advise the Vaultier, as she was anxiously awaiting results of her exercise. Mr Breiter did not

escort the Horse either as he was preparing to supervise the next competitor who was also a member of the Austrian team. When Mr Breiter eventually reached the testing box he witnessed the very end of the testing being carried out, and the signing of the Form by the Lunger.

12. The Horse was escorted to the testing box while led by the groom, who happened to be the Lunger's sister. The Lunger indicated that the groom has not been appointed as her representative and, although sisters, she may not be considered as the Lunger's "long – arm".
13. The Judicial Committee is of the opinion that for the purposes of VR Article 1018 notification to either of the persons responsible in Vaulting (the Vaulter and Lunger) is sufficient, as both share similar interests in regard to the supervision of the sampling process and for these purposes must be viewed as one unit, as provided for in the Vaulting Rules Article 719.1 ("[a]t vaulting competitions longeur, horse and vaulter is a competitive unit."). To hold otherwise would place a substantial burden on officials and is likely to make the sampling processes slower and less efficient without increasing fairness in a substantial way. The inability of a testing veterinarian to begin a test promptly may significantly affect the effective collection of urine samples.
14. The Judicial Committee is of the opinion that the notification provided to the groom and to the Chef d'Equipe, combined with the later arrival of the Lunger and the signing of the Form, is sufficient notification in the specific circumstances of this case. The groom and the Chef d'Equipe also have a certain obligation to advise the Vaulter or Lunger regarding the doping test. One cannot expect officials in the turmoil of the event to chase the persons responsible and confirm their identity. The people responsible for horses on leaving the arenas must have certain responsibility to be acquainted with the sampling procedures and inform the persons responsible by mobile phone or otherwise, whereupon the persons responsible should report to the testing box.
15. Mr Breiter argued that further to the Judicial Committee's decision in Picasso 202 (Case 2004/45 issued March 6 2006), a similar issue of lack of notification to the PR led to the conclusion that the test results were invalidated. The Judicial Committee finds that the Picasso 202 decision is clearly distinguishable from the case at hand on a number of grounds. The Picasso 202 case involved an event held prior to the latest modification to GR Article 142.2 and at a time when only the lunger was the person responsible. Additionally, the decision was made prior to the introduction of the new EADMC Rules and particularly Article 5.3.

Additionally, in the Picasso 202 case the lunger had not been notified nor made aware of the sample collection despite evidence indicating her presence and availability. The lunger was not present during any part of the sample collection and had not signed the Form. This was further aggravated by the case having been initiated against the vaulter and only later corrected by the identification of the lunger as the person responsible.

4.4 The Sampling Procedures – Blood Collection

16. Substantial testimony was provided regarding alleged irregularities relating to the gathering of the blood samples. Apparently, following the gathering of the urine, the Lunger observed that the testing veterinarian may have had additional tubes utilized for the collection of blood in his right hand vest pocket. He added the 6 tubes available in the testing pack in a sealed plastic bag into the pocket and exerted the blood.
17. The FEI Testing Protocol requires either 4 or 6 blood tubes to be filled, based on whether urine has been collected in a sufficient quantity. Therefore, often 2 tubes remain unused.
18. Dr Frans J. ter Beek, the Testing Veterinarian who conducted the testing of the Horse, and his colleague, Dr Gunter Eisenhardt, in their testimonies, confirmed that all blood tubes in the vest pocket were empty and that there is no possibility that contaminated tubes or filled tubes were in the Testing Veterinarian's pocket before the test started. The method was described as one typically used to ensure easy extraction of blood after the needle is already in the horse. Once blood is extracted the tubes are placed on the table and marked clearly in front of the person responsible.
19. Dr Frans J. ter Beek further stated that he had to start the test and could not wait for the PRs to arrive since it is advantageous to collect urine and the timing of collection is not entirely in the hands of the veterinarian.
20. Dr Sluyter testified that using contaminated blood tubes was not likely, since once they are opened their vacuum is lost and they cannot be used. Dr Sluyter testified that "I never heard in my life" about the use of contaminated blood tubes.
21. Dr Sluyter further testified that if the PRs suspected improper testing they had the opportunity to approach the veterinary commission and request that a retesting be held.
22. Since the lab analysis in this case was done on urine and not blood, the Judicial Committee believes that the PRs arguments relating to the extraction of blood from the Horse are not relevant

and that no germane issue of contamination arises. The Judicial Committee further believes that the evidence did not substantiate that the veterinarian's practices were not appropriate or could have likely led to contamination of the blood samples.

4.5 The Sampling Procedures – Legal Considerations

23. EADMCR Article 5.3 states: "*Testing* conducted by or on behalf of the FEI shall be in substantial conformity with the *Testing* procedures in the FEI Veterinary Regulations in force at the time of *Testing*. A departure from these procedures shall only invalidate a given test if it undermines the validity of the *Adverse Analytical Finding*.". The PR's formalistic view is also inconsistent with the applicable CAS case law (see e.g. CAS 2002/A/385 T. / International Gymnastics Federation, 23 January 2003, CAS Digest III 334 para. 15, stating that "... [T]here is consistent CAS case law which makes clear that deviations from the testing procedures prescribed by the relevant federation rules will only invalidate the results of an analysis where they are sufficiently material as to call into question the reliability of the test").

The rules of the FEI "do not make it a condition precedent in law for the validity of a test for prohibited substances that each and every item of stipulated procedure be followed to the letter [...]. Nor is it a condition precedent as a matter of fact" (Arbitration CAS 98/184, P. / FEI, 25 September 1998, CAS Digest II 197, para. 17, FEI Exhibit 16; see also Arbitration CAS 92/63, G. / FEI, 10 September 1992, CAS Digest I 115, para. 13 *in fine*).

The CAS has repeatedly considered that minor irregularities were unable to invalidate the results of the analysis: "... if the Panel is satisfied that the sample tested came from the person or horse in question, and that the chain of custody is established, that no question of contamination arises, that the equipment used to test was appropriate and that the results were correctly interpreted, then it should not be deterred from upholding a verdict as to the presence of a prohibited substance merely because some departure from procedure may be proven, still less because of matters irrelevant to the validity of the test" (Arbitration CAS 98/184, P. / FEI, 25 September 1998, CAS Digest II 197, para. 19).

4.6 The Burden of Proof

24. The FEI has the initial burden of proving the presence of one or more prohibited substance in the body of the Horse. That is the objective element of the offence of doping. Once the FEI is able to establish the objective elements of a doping offence, there is a presumption of fault on the PRs. This so called strict liability, or no-fault system, means that no intention is required in order to establish the objective elements of a doping offence. The mere presence of a prohibited substance in the Horse's system is sufficient.
25. The FEI is not required to demonstrate any competitive advantage to the PRs resulting from the presence of the prohibited substance as the intent and competitive advantage issues are only taken into consideration in the determination of the sanctions imposed.
26. The system of strict liability has been reconfirmed time and again and the CAS has repeatedly expressed its view that disqualification is the conventional consequence of breach without respect to whether or not the amount of the substance that was detected could have affected or was intended to affect the performance.

4.7 The Decision

27. The Judicial Committee is satisfied that sample collection, despite any minor irregularities, was done in a way that has not undermined the validity of the findings and should, therefore, not be invalidated.
28. The Judicial Committee is satisfied that the laboratory report reflects that the test was accurately performed in an acceptable method and that the findings of LCH are accurate. The Judicial Committee is satisfied that the test results show the presence of the Prohibited Substance.
29. The FEI has thus sufficiently proven the objective elements of a doping offence in accordance with EADMCRs Article 3.
30. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PRs. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PRs to affect the performance of the horse. The PRs have the opportunity to seek to rebut this presumption, in accordance with EADMCRs Article 10.5.

31. In their efforts to rebut the presumption that the administration of the medication constituted a deliberate attempt to affect the performance of the Horse, both PRs testified that the Horse had no medical problems at or in close proximity to the Event and received no medication. The Vaultier testified that the food-stuffs and herbal supplements given to the horse at the time were sent by her to be analyzed following the positive results and that these tests did not reveal the presence of any prohibited substances.
32. The Vaultier testified that the Horse, a 14 year old, was kept at her parents' yard and was generally treated by one veterinarian, Dr Peter Zebisch. Both PRs and Dr Peter Zebisch testified that the horse was generally healthy and that they have not administered the prohibited substance to the Horse. The Vaultier testified that she has always inquired regarding participation in future events following any treatment given to her horses. Dr Peter Zebisch testified that the Horse has not been treated with the prohibited substance and that based on his best recollection the last treatments given to the Horse with other substances were during the winter that preceded the Event for a minor cough and several months before the Event for a small hoof injury.
33. The Vaultier further testified that she had two horses at the Event, both excellent ones, and had anything been suspected she could have used her other horse which has been given by her to another team member.
34. The PRs testified that the two grooms of the Austrian Vaulting Team at the Event attended to six horses, including the Horse, and could, therefore, not supervise the Horse around the clock and that it is, therefore, possible that a third party administered the prohibited substance to the Horse.
35. The PRs and their witnesses provided no further evidence substantiating how the prohibited substance reached the Horse's systems. Under EADMCRs Article 10.5 the PRs should establish that they bear no fault or negligence or no significant fault or significant negligence. Under EADMCRs Article 3.1 the standard of proof required is "by a balance of probability". The Judicial Committee believes that the PRs were not successful in meeting their burden of proof in this matter.
36. In deciding the sanctions the Judicial Committee considered, on the one hand, the type of substance involved, which is referred to as a "Medication A" substance, and, on the other hand, the PRs failure to explain the presence of the substance, despite their credible testimony and apparent lack of knowledge of the substance administration. The Judicial Committee further

considered the relative young age of the PRs and their amateur status, being students who participate in the sport through great efforts and sacrifices primarily out of sheer love of the vaulting discipline and of their horses. The Judicial Committee also considered that the consequences of having to lose a World Equestrian Games medal have to be taken into account in considering other sanctions to be imposed.

4.8 Disqualification

It is the Judicial Committee's decision after considering the relevant provisions of the EADMCRs, the General Regulations and the Vaulting Rules that, as a result of the foregoing the PRs as either the Lunger or Vaulters of this Horse are disqualified together with the Horse and all medals, points and prize money won at the Event by this combination of Lunger and Vaulters, including with the Horse must be forfeited, in accordance with EADMCRs Article 9.

4.9 Sanctions

As a consequence of the foregoing, the Judicial Committee decides to impose on the PRs the following sanctions, in accordance with GR Article 174 and EADMCRs Article 10:

- 1) Each of the PRs is suspended for a period of 3 months 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 if the appeal is waived in writing by or on behalf of the PR.;
- 2) Each of the PRs is fined CHF 1000.-; and
- 3) Each of the PRs shall contribute CHF 750.- towards the legal costs of the judicial procedure, and CHF 375.- towards the cost of the confirmatory analysis.

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 :

Signature: