



## **DECISION of the FEI TRIBUNAL**

**dated 8 January 2013**

**Positive Controlled Medication Case No.:** 2012/CM07

**Horse:** OBYAN AL AHMAR

**FEI Passport No:** UAE02019

**Person Responsible:** Khalil Abdulsamad Abdullatif/BRN/10033439

**Event:** CEI1\*-100km – Sakhir (BRN)/2012-CI\_0914\_E\_S\_02\_01

**Date:** 3 March 2012

**Controlled Medication Substances:** Dexamethasone, Phenylbutazone, Oxyphenbutazone

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

Mr. Patrick A. Boelens (one member panel)

### **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, as also made available by and to the PR.
- 3. Oral hearing:** none; by correspondence.

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

- 1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23<sup>rd</sup> edition, effective 15 November 2011 ("Statutes"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1 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"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2012.

Veterinary Regulations ("VRs"), 12<sup>th</sup> edition, effective 5 April 2010, updates effective 1 January 2012, Art. 1013 and seq. and Annex II (the "Equine Prohibited Substances List").

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Khalil Abdulsamad Abdullatif

**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)".

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an *Event*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 *ECM Rules* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1".

#### **IV. DECISION**

##### **1. Factual Background**

1.1 OBYAN AL AHMAR (the "Horse") participated at the CEI1\*-100km in Sakhir, Bahrain on 3 March 2012 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Khalil Abdulsamad Abdullatif, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").

1.2 The Horse was selected for sampling on 3 March 2012.

1.3 Analysis of the blood sample no. FEI-5507229 taken from the Horse at the Event was performed at the FEI approved

laboratory, the Sport Science Laboratory ("HFL") in the United Kingdom, by Ms Selina Hines, Team Leader, under the supervision of Mr. Steve Maynard, Director. The analysis of the sample revealed the presence of Dexamethasone, Phenylbutazone and Oxyphenbutazone (Certificate of Analysis no. 73140 dated 15 March 2012).

- 1.4 The Prohibited Substances detected are Dexamethasone, Phenylbutazone and Oxyphenbutazone. Dexamethasone is a corticosteroid used for non-immune and inflammation treatment. Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and pain relief effect. Oxyphenbutazone is a metabolite of Phenylbutazone. All three substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Dexamethasone, Phenylbutazone and Oxyphenbutazone to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") had been provided by the PR for the use of the substances on the Horse. Therefore, the positive findings for Dexamethasone, Phenylbutazone and Oxyphenbutazone in the Horse's sample at the Event give rise to a Controlled Medication Rule violation under the EADCMRs.
- 1.6 Under the ECM Rules, in cases of Controlled Medication Substances, a PR may elect the so-called "Administrative Procedure" (also referred to as "Fast-Track"), provided that the prerequisites of Article 8.3.1 of the ECM Rules are fulfilled. However, the case at hand is not eligible for the Administrative Procedure insofar as more than one Controlled Medication Substance had been detected in the Horse's sample.

## **2. The Proceedings**

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the Bahrain Royal Equestrian & Endurance Federation ("BRN-NF"), by the FEI Legal Department on 7 May 2012.

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

- 3.1 Together with the Notification Letter of 7 May 2012, 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. The Further Proceedings**

- 4.1 On 20 April 2012, the PR through the BRN-NF, explained that following some investigation, he had learned that the Horse's groom had accidentally used some bandages which were contaminated with Dexamethasone ointment on the Horse. The contamination was caused by the fact that the same bandages had been used on a different horse that had been treated while standing next to the Horse. The PR contended that those contaminated bandages must have caused the positive result. The PR further explained that the stable management was poor since the stable of the Horse was situated in a remote area, and that the stable was small. That in addition, because of a tight financial situation, the service of veterinarians had only been used under extreme circumstances and not for routine treatments. The PR further submitted that he had competed at the Event with good intentions, and that following the positive result, he had reinforced the efforts for good stable management, and ensured that a qualified veterinarian was in place when any form of treatment was administered. That lastly, the Tribunal should also take into account that this was his first violation of the EADCMRs.
- 4.2 On 12 November 2012, the FEI submitted its Response to the PR's submission. Together with its submission, the FEI provided a statement by Ms. Victoria Unt, BVetMed MRCVS and Veterinary Advisor to the FEI Veterinary Department. Ms. Unt explained that it was highly unlikely that transdermal absorption of Dexamethasone from the contaminated bandages would lead to sufficient quantities of Dexamethasone resulting in levels in the plasma blood sample which would exceed the FEI Screening Limit.
- 4.3 Relying on the statement by Ms. Unt, the FEI argued that it was highly unlikely that the Dexamethasone in the Horse's system resulted from transdermal absorption of contaminated bandages, and that the PR had not provided any explanation for the positive finding of Phenylbutazone and Oxyphenbutazone. That therefore, the PR had not established by a balance of probability how the Prohibited Substances had entered the Horse's system. That consequently, no elimination of the period of Ineligibility under Article 10.4.1 of the ECM Rules was applicable, and that a period of Ineligibility of up to two years pursuant to Article 10.2 of the ECM Rules had to be imposed.
- 4.4 The FEI further requested that when determining the sanctions under Article 10.2 of the ECM Rule, the Tribunal took into consideration the legal principle of proportionality, specifically that the sanction has to be commensurate with the seriousness

of the offence. That in this context it should be noted that three Controlled Medication Substances had been detected in Horse's sample. Further that given that the PR had not provided any comprehensive explanation regarding the positive finding of those three Prohibited Substances and given that apparently, the PR had not consulted any veterinarian on the treatments administered to the Horse, it was difficult to assess the PR's fault or negligence for the rule violation. That it should be noted however that he showed determination to improve his stable management in the future, and to accomplish regulatory compliance.

- 4.5 The PR did not provide any further comments to the FEI Submission of 12 November 2012.

## **5. Jurisdiction**

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

## **6. The Person Responsible**

- 6.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he competed with the Horse at the Event.

## **7. The Decision**

- 7.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication 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 report relating to the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Dexamethasone, Phenylbutazone and Oxyphenbutazone in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings, and did not request for the B-Sample analysis to be performed. Dexamethasone, Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substances under the Equine Prohibited Substances List, and they are prohibited during Competition unless an ETUE has been granted for the use of the substances.
- 7.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 7.3 In cases brought under the EADCMRs, a strict liability principle

applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.

- 7.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".
- 7.5 The Tribunal takes note of the PR's explanations, in particular that the positive test result had been caused by the accidental use of Dexamethasone contaminated bandages. The Tribunal further takes note of Ms. Unt's statement, explaining that it was highly unlikely that any Dexamethasone contamination of the bandages would have lead to the positive finding. The Tribunal takes note that the PR has not provided any scientific supporting documentation regarding his allegations, and has not rebutted the FEI's point of view, as expressed by the FEI's veterinarian Ms. Unt. The Tribunal therefore holds that the PR failed to establish, by a balance of probability, that the alleged use of the contaminated bandages caused the positive findings for Dexamethasone. Furthermore the PR has not established how the Phenylbutazone and Oxyphenbutazone entered the Horse's system, since he has not at all addressed this question in his explanations. The Tribunal therefore holds that the PR has not established by a "balance of probability" how the three Prohibited Substances entered the Horse's system. Accordingly, the Tribunal does not have to address the question whether the PR had established that he did not bear any Fault or Negligence for the Rule violation as required under Article 10.4.1 or Article 10.4.2 of the ECM Rules.
- 7.6 In deciding the sanctions, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility. Since the Tribunal comes to the conclusion that the PR failed to prove how the Controlled Medication Substances entered the Horse's system, it is not possible for the Tribunal to assess the PR's Fault or Negligence for the Rule violation. Therefore, the Tribunal is forced to take into account other, more objective factors in order to determine the period of Ineligibility.
- 7.7 In deciding the sanctions the Tribunal considered, on the one hand, the fact that two Controlled Medication Substances and one of its metabolites had been detected in the Horse's sample, and that the PR had not consulted any veterinarian on the treatments administered to the Horse and his horses in

general. And on the other hand, and in mitigation, the PR's determination to improve his stable management in the future, and to accomplish regulatory compliance with respect to equine anti-doping.

## **8. Disqualification**

- 8.1 For the reasons set forth above, the Tribunal is 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 ECM Rules.

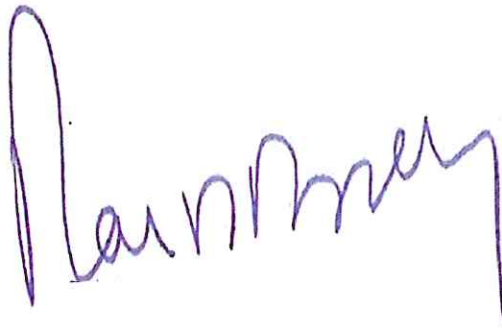
## **9. Sanctions**

- 9.1 The Tribunal imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **10 (ten months)** to be effective immediately and without further notice from the date of the notification of the present decision. Therefore, the PR shall be ineligible through **7 November 2013**.
  - 2) The PR is fined **CHF 1.500-.**
  - 3) The PR shall contribute **CHF 750-.** towards the legal costs of the judicial procedure.
- 9.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity 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 organised by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.
- 9.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 9.4 In accordance with Article 12 of the ECM Rules, the PR may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 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 blue ink, appearing to read 'Patrick A. Boelens', written in a cursive style.

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**One member Panel, Patrick A. Boelens**