



DECISION of the FEI TRIBUNAL

dated 6 May 2013

Positive Controlled Medication Case No.: 2012/CM08

Horse: MAJOR ARMOR

FEI Passport No: FRA44784

Person Responsible: Hamad Towaim Ali Al Marri/QAT/10044326

Member of the Support Personnel: Jabr Nasser Al Razami

Event: CEI3*-160km – Florac (FRA)/2012_CI_0666_E_S_01

Date: 8 September 2012

Controlled Medication Substances: Dexamethasone, Flunixin, Phenylbutazone, Oxyphenbutazone

I. COMPOSITION OF PANEL

Mr. Henrik Arle (one member panel)

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and at the oral hearing, as also made available by and to the PR and the member of the Support Personnel.

3. Oral hearing: 23 April 2013 – Telephone conference.

Present:

Mr. Henrik Arle, one member panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Mr. Hamad Towaim Ali Al Marri, PR
Mr. Jason Kirk, Interpreter

For the member of the Support Personnel:

Mr. Jabr Nasser Al Razami, member of the Support Personnel
Mr. Rashid Al Jehani, member of the Qatar Endurance
Committee and Interpreter
Ms. Carol Bunting, member of the Qatar Endurance Committee

For the FEI:

Ms. Carolin Fischer, FEI Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1 and 169 ("GRs").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

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

Veterinary Regulations ("VRs"), 12th 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: Mr. Hamad Towaim Ali Al Marri

3. Member of the Support Personnel: Mr. Jabr Nasser Al Razami

4. 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".

EADCMRs Annex 1 – DEFINITIONS: "Support Personnel. Any coach, trainer, athlete, *Horse* owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a *Person Responsible* participating in or preparing for equine sports *Competition*. Veterinarians are included in the definition of *Support Personnel* with the understanding that they are professionals subject to professional standards and licenses. An allegation that a veterinarian violated an *EADCM Regulation* will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the Hearing. 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 Panel has 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 MAJOR ARMOR (the "Horse") participated at the CEI3*-160km in Florac, France, on 8 September 2012 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Hamad Towaim Ali Al Marri, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 8 September 2012.
- 1.3 Analysis of the blood sample no. 5516296 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory, Sport Science ("HFL") in the United Kingdom by Ms. Ruth Schiller, Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis revealed the presence of Dexamethasone, Flunixin, Phenylbutazone and Oxyphenbutazone in the sample (Certificate of Analysis 77373 dated 27 September 2012).

- 1.4 The Prohibited Substances detected are Dexamethasone, Flunixin, Phenylbutazone and Oxyphenbutazone. Dexamethasone is a corticosteroid that is used to treat inflammation and immune related conditions. Flunixin, Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and pain relief effect. Oxyphenbutazone is a metabolite of Phenylbutazone. The four substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Dexamethasone, Flunixin, 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, Flunixin, 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 the presence 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 Qatar Equestrian Federation ("QAT-NF"), by the FEI Legal Department on 16 October 2012.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 16 October 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 22 October 2012, the PR, through the QAT-NF, confirmed receipt of the Notification Letter of 16 October 2012.
- 4.2 On 19 November 2012, Mr. Jabr Nasser Al Razami, Al Shaqab stable trainer, explained that: (i) he took responsibility for the positive doping case of the Horse; (ii) the PR had no knowledge about the health condition of the Horse; (iii) the Horse had suffered from a colic after training four (4) days prior to the Event; (iv) therefore the Horse had been administered Fynadine and Dexaphenylarthrite; (v) an intensive fluid therapy had been conducted on the days following the administration with the intent to clean and eliminate substances administered previously; (vi) the Horse had only been requested to complete the race, but not to fight for the top positions; (vii) he did not have any prior Anti-Doping or Controlled Medication case during the twenty (20) years he worked in the sport.
- 4.3 Following Mr. Al Razami's statement of 19 November 2012, by means of Notification Letter of 5 December 2012, the FEI charged Mr. Al Razami as member of the Support Personnel for the rule violation in accordance with the definition of the member of the Support Personnel under the EADCMRs. The Notification Letter included notice that Mr. Al Razami was entitled to submit written explanations, and that he had the right to request a hearing.
- 4.4 On 11 December 2012, the PR and Mr. Al Razami further explained that: (i) the Horse was maintained in a large modern stable; (ii) the Horse did not require any medical treatment in the year prior to the Event; (iii) the member of the Support Personnel had injected Finadyne and Dexaphenylarthrite for pain relief; (iv) the PR had given no instructions nor taken any precautions to ensure compliance with the Rules.
- 4.5 On 10 January 2013, the member of the Support Personnel confirmed receipt of the Notification Letter of 5 December 2012, and explained that he did not wish to add anything to his previous statement of 19 November 2012.
- 4.6 The Final Hearing took place on 23 April 2013, via telephone conference.
- 4.7 During the Final Hearing, the PR alleged that he was a newcomer to the sport, and did not have any experience. However, upon questioning the PR conceded that he had been participating in FEI Competitions since 2008, i.e. since the age of fifteen. He however stressed that he was only employed by the Horse's stable for riding horses, and that he

was not involved with the feeding or the health of the Horse or any of the other horses, and that it was further the QAT-NF deciding on his competition schedule. That he had only seen the Horse on the day prior to the Event, and had ridden it under the instructions of its trainer. In addition, the PR argued that he had not requested any information on the Horse from either the Horse's trainer or the veterinarian, and that therefore he did not have any knowledge of the Horse's condition. Lastly the PR declared that he had been unaware of the FEI Equine Anti-Doping and Controlled Medication Regulations and Veterinary Regulations prior to this case.

- 4.8 Ms. Carol Bunting, member of the Qatar Endurance Committee, confirmed that the PR's responsibility was limited to riding the Horse, and that the PR had not administered any Prohibited Substances to the Horse at any time.
- 4.9 Mr. Al Razami confirmed that he had administered the Prohibited Substances – which he had brought from Qatar – to the Horse by injection, five (5) days prior to the Event, and that he had allowed the Horse to compete at the Event, as he had been certain that the Prohibited Substances would no longer be detectable in the Horse's blood at the time of the Event. Mr. Al Razami further explained that he had not sought any veterinary advice prior to administering the Prohibited Substances, and that whereas he had no veterinary background, he had seventeen (17) years of experience in the sport. Finally, he acknowledged that he was aware of the EADCMRs, that he had known that the substances administered were Controlled Medication Substances, and that he had nonetheless taken the decision to administer them to the Horse.
- 4.10 During the Final Hearing, the FEI stressed that under the EADCMRs, the rider was, and always remained the Person Responsible for a positive finding, and that other individuals would only be additionally considered as responsible. In response to the PR's claim of his little experience the FEI underlined that the Horse had tested positive at a CEI3* Event, which counted as one of the highest levels in the sport of Endurance. The FEI further requested that the Tribunal take into account that three Controlled Medication Substances and one of its metabolites had been detected in the Horse's sample. With regard to Mr. Razami the FEI argued that as trainer of the Horse, he generally qualified as a member of the Support Personnel, and that by administering the medication to the Horse he had assisted the PR in preparing for the Competition.

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 member of the Support Personnel

- 7.1 Mr. Al Razami is a member of the Support Personnel in accordance with the EADCMRs, as will be detailed below.

8. The Decision

- 8.1 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 reports relating to the A-Sample reflect 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, Flunixin, 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, Flunixin, Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 8.2 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.
- 8.3 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 rule violation 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.
- 8.4 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.

- 8.5 The Tribunal finds that by means of the explanations by the member of the Support Personnel, the PR has established by "a balance of probability", as required under Article 3.1 of the ECM Rules, that the substances administered to the Horse, Finadyne and Dexaphenylarthrite, have caused the positive test result. The Tribunal understands that Dexaphenylarthrite contains the Controlled Medication Substances Phenylbutazone and Dexamethasone, and that Finadyne further contains the substance Flunixin. The Tribunal is therefore satisfied that the PR has established how the Prohibited Substance entered the Horse's system.
- 8.6 The Tribunal therefore needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. To start with, the Tribunal takes note of the PR's, Mr. Al Razami's and Ms. Bunting's explanations concerning the PR's lack of awareness of the Horse's condition, and the alleged lack of involvement by the PR in the Horse's feed and health. The Tribunal however holds that irrespective of whether or not the PR had knowledge of the Horse's condition and the Prohibited Substances administered, he is responsible for the positive finding in the Horse's sample. The Tribunal comes to this conclusion as under the strict liability principle, embedded in Article 2.1.1 of the ECM Rules, it is not necessary to demonstrate intent or knowing Use in order to establish a rule violation.
- 8.7 The Tribunal considers that the PR has acted with gross negligence. In accordance with Article 2.1.1 of the ECM Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event. In the case at hand, the PR, who had been competing at FEI events since 2008, did not make himself familiar with the Equine Anti-Doping and Controlled Medication Regulations or Veterinary Regulations, nor did he request any information on the Horse's feed or health prior to the Event. Furthermore, the PR is not released from his responsibility given that other individuals, here Mr. Al Razami, may potentially also be held responsible for the rule violation. This is because it follows from the wording of Article 118.3 of the GRs that the PR, as rider of the Horse at the Event, is the primary Person Responsible for the Horse, and that the responsibility of other individuals would only be considered in addition to the responsibility of the PR.
- 8.8 The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 8.9 With respect to Mr. Al Razami, the Tribunal finds that he may be considered as member of the Support Personnel under the EADCMRs as he had been the trainer of the Horse at the

Event and as such had assisted the PR in preparing for the Competition, insofar as he had taken care of the Horse, and had also administered the Prohibited Substances to it. With regard to the question of Fault or Negligence for the rule violation by Mr. Al Razami, the Tribunal holds that he had been grossly negligent when administering the Controlled Medication Substances and then allowing the Horse to compete without having consulted a specialist in order to ensure that the Controlled Medication Substances would be out of the Horse's body at the time of the Event. That he had further been grossly negligent for not having requested an Equine Therapeutic Use Exemption for the Controlled Medication Substances used before the start of the Event, in accordance with the FEI Veterinary Regulations. The Tribunal therefore holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

8.10 Accordingly, the Tribunal finds that the PR and the member of the Support Personnel have acted grossly negligently in performing their duties as competitor and stable trainer, as Person Responsible and member of the Support Personnel respectively.

8.11 In deciding the sanctions, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility. The Tribunal considered, on the one hand, the level of the Event and the fact that three Controlled Medication Substances and one of its metabolites had been detected in the Horse's sample. Further that the PR had not taken any measurements to assure that no Controlled Medication Substance was present in the Horse's body during the Event, and that the member of the Support Personnel had not consulted any veterinarian prior to administering Controlled Medication Substances to the Horse. And on the other hand, and in mitigation, that the member of the Support Personnel accepted responsibility for the rule violation when confronted with it and advocated for a reduction in the PR's fault.

9. Disqualification

9.1 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.

10. Sanctions

10.1 The FEI Tribunal imposes the following sanctions on the PR and on the member of the Support Personnel, 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 **eight (8) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **5 January 2014**.
- 2) The member of the Support Personnel shall be suspended for a period of **ten (10) months** to be effective immediately and without further notice from the date of the notification. Therefore, the member of the Support Personnel shall be ineligible through **5 March 2014**.
- 3) The PR is fined **CHF 1,000**.
- 4) The member of the Support Personnel is fined **CHF 3,000**.
- 5) The PR shall contribute **CHF 1,000** towards the legal costs of the judicial procedure.
- 6) The member of the Support Personnel PR shall contribute **CHF 1,000** towards the legal costs of the judicial procedure.

10.2 No Person Responsible or member of the Support Personnel who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized 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.

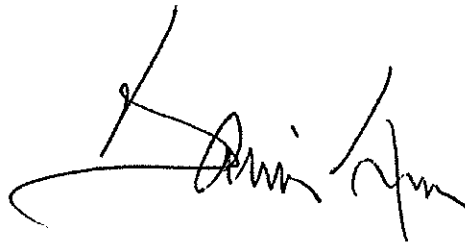
10.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

10.4 In accordance with Article 12 of the ECM Rules, the PR and the member of the Support Personnel 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 persons sanctioned: Yes
- b. The President of the NF of the persons 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 black ink, appearing to read 'Henrik Arle', written over a horizontal line.

One member panel, Mr. Henrik Arle