



## **DECISION of the FEI TRIBUNAL**

**dated 27 July 2016**

**Positive Controlled Medication Case No.:** 2015/CM07

**Horse:** CARINJO R

**FEI Passport No:** UKR103HQ64/UKR

**Person Responsible/NF/ID:** Tetiana Sheinich/UKR/10083183

**Event:** CSI1\* – Vilamoura (POR)/2015\_CI\_1221\_S\_S\_02\_03

**Date:** 13 – 18 October 2015

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

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

Mr. Erik Elstad, 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, as also made available by and to the PR.
- 3. Oral hearing:** none

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

#### **1. Relevant Statutes/Regulations:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2015, Arts. 118, 143.1, 161, 168 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**"), 2<sup>nd</sup> edition, effective 1 January 2015.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, effective 1 January 2015.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition, effective 1 January 2015, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Ms. Tetiana Sheinich

**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 body during an Event without a valid Veterinary Form. 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**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 Tribunal 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 CARINJO R (the "**Horse**") participated at the CSI1\* in Vilamoura, Portugal, from 13 to 18 October 2015 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Ms. Tetiana Sheinich, who is the

Person Responsible in accordance with Article 118 of the GRs (the "**PR**").

- 1.2 The Horse was selected for sampling during the Event, on 18 October 2015.
- 1.3 Analysis of urine and blood sample no. 5544491 taken from the Horse at the Event was performed at the FEI approved laboratory, the LGC Newmarket Road Laboratory, Fordham, United Kingdom ("**LGC**"). Analysis of the sample revealed the presence of Flunixin, Phenylbutazone and Oxyphenbutazone, in the urine and in the plasma.
- 1.4 The Prohibited Substances detected are Flunixin, Phenylbutazone and Oxyphenbutazone. Flunixin, Phenylbutazone and Oxyphenbutazone (metabolite of Phenylbutazone) are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and analgesic effect. The substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request has been made to administer the respective substances to the Horse, and no Veterinary Form has been provided for the use of the substances on the Horse. Therefore, the positive finding for Flunixin, Phenylbutazone and Oxyphenbutazone in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

## **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 and the owner of the Horse, through the Ukraine National Federation ("**UKR-NF**"), by the FEI Legal Department on 15 December 2015.
- 2.2 The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.

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

- 3.1 Together with the Notification Letter of 15 December 2015, the PR and the owner of the Horse were also informed that they were 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 Neither the PR, nor the owner of the Horse, did request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

#### **4. Written submission by the PR**

On 1 February 2016, the PR explained by statement (dated 21 January 2016) that on 16 October 2015 the organizers of the Event had announced that the last day of the Competition and future Competitions were cancelled due to adverse weather conditions. Knowing that, and since the Horse was almost sixteen (16) years old and stiff, a groom had made an independent decision to administer some "aspirine" (one spoon) and one dose of the product "Equipalazone" (Spanish name "EQ") to the Horse after the last day of Competition was announced. The PR further explained that at the end of the following day, *i.e.*, on 17 October 2015, the organizers of the Event announced that competitions of 18 October 2015 would be held. The PR further indicated that a second groom – unaware of the actions of the first groom – had prepared the Horse for the Competition on 18 October 2015, *i.e.*, the day of sample collection.

#### **5. Provisional Suspension**

- 5.1 Upon request of the PR a Preliminary Hearing was held on 29 March 2016. During the Preliminary Hearing the PR explained that she had started riding only four (4) years ago, and that she was an amateur rider. That her intention was to take care of her horses, including the Horse, and that she was generally following the advice of her veterinarian, who had previously told her that "aspirine" was good for the Horse. She confirmed – as previously outlined in her written submission – the medications administered to the Horse by the groom, and indicated further that, during the Event, she had not asked the groom whether he had administered any Controlled Medication Substances to the Horse. The PR indicated that she understood that she was responsible for the actions of her groom. Finally, that she requested the lifting of the Provisional Suspension since she wanted to compete and take care of horses.
- 5.2 The FEI argued that based on what had been submitted so far, the PR had not met any of the prerequisites necessary under Article 7.4.4 of the ECM Rules for the lifting of the Provisional Suspension. More specifically, the FEI argued that there was no material defect in the evidence on which the allegation was based in accordance with Article 7.4.4 (i) of the ECM Rules. Further, that the PR had not established that she bore No (Significant) Fault or Negligence for the Rule violation, and that – pursuant to Article 7.4.4 (iii) of the ECM Rules – no exceptional circumstances existed in the case at hand that made it clearly unfair, in all of the circumstances of the case, to impose a Provisional Suspension prior to the final hearing of the FEI Tribunal. Lastly, the FEI highlighted that three (3) Controlled Medication Substances had been found in the Horse's sample. The FEI therefore requested the FEI Tribunal to maintain the Provisional Suspension of the PR.

- 5.3 On 30 March 2016, the Preliminary Hearing Panel, having considered the explanations provided prior and during the Preliminary Hearing, decided not to lift the Provisional Suspension; thus the Provisional Suspension was maintained. The Preliminary Hearing Panel found that at the time, the prerequisites for a lifting of the Provisional Suspension under Article 7.4.4 of the ECM had not been met.
- 5.4 On 21 April 2016, the UKR-NF confirmed that the PR had followed the conditions of the Provisional Suspension, and had not participated in any event (national or international) since 16 December 2015, *i.e.*, the day following notification of the Provisional Suspension. That therefore the period of Provisional Suspension should be taken into consideration in the case at hand. Finally, that the PR was an amateur rider, and that she had violated the ECM Rules for the first time in the case at hand.
- 5.5 On 8 June 2016, the FEI requested the lifting of the Provisional Suspension. The FEI further argued that the request by the FEI was aiming at avoiding the potential situation in which the Provisional Suspension would be of a longer duration than the Final Suspension (if any) imposed by the Tribunal. The FEI was therefore requesting the lifting of the Provisional Suspension at the earliest convenience after 15 June 2016, *i.e.*, the date on which the PR had been provisionally suspended for (six) 6 months. Finally, the FEI highlighted that its request had by no means to be understood as a final statement by the FEI regarding the sanctions to be imposed on the PR; rather, that the request was being made with an abundance of caution, in order to avoid that the Provisional Suspension was running longer than any final period of Ineligibility that could be imposed at a later stage.
- 5.6 On 10 June 2016, - having been granted with the opportunity to comment on the FEI request by the Preliminary Hearing Panel - the PR stated that she agreed with the FEI request on the lifting of the Provisional Suspension. The PR further requested that the Tribunal considered and adjudicated the case at hand.
- 5.7 On 15 June 2016, the Preliminary Hearing Panel decided to lift the Provisional Suspension as of 15 June 2016, midnight CET.

## **6. Written submission by the FEI**

- 6.1 On 26 May 2016, the FEI provided its Response to the explanations of the PR.
- 6.2 In essence the FEI submitted that:
  - a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. "*It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1*". Instead it was a

"strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample. The results of the analysis of the A- Sample taken from the Horse at the Event confirmed the presence of Flunixin, Phenylbutazone and Oxyphenbutazone, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. The PR did not dispute the presence of Flunixin, Phenylbutazone and Oxyphenbutazone in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offence who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless the PR was able to rebut the presumption of fault. And that to do this the rules specified that the PR must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances (here, Flunixin, Phenylbutazone and Oxyphenbutazone) entered the Horse's system; and (ii) that the PR bears No Fault or Negligence for that occurrence; or (iii) that the PR bears No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumption of intentional administration to enhance the performance stood.
- c) The ECM Rules stipulate, and the jurisprudence of the Tribunal and CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance entered into the Horse's system. In the FEI's opinion, the PR has given a plausible explanation of how the Flunixin, Phenylbutazone and Oxyphenbutazone could have entered into the Horse's system. The FEI was therefore satisfied that the PR has fulfilled the requirement of Article 10.4, how the substances entered into the Horse's body.
- d) With regards to Fault/Negligence for the rule violation, the FEI argued that, following from Article 2.1.1 of the ECM Rules the PR had a personal duty to ensure that no Controlled Medication Substance was present in the Horse's body. That however the level of the PR's fault was high and she has been negligent with regards to her responsibilities under the EADCMRs which have resulted in the rule violation. The PR had clearly failed in her duty of utmost caution to ensure that the Horse has not ingested any Prohibited Substances.
- e) By reference to a CAS decision (CAS 2013/A/3318 Stroman v. FEI), the FEI argued that the PR could not rely on any person to perform this duty. In CAS jurisprudence it was clear that "*the duty of caution or due-diligence is non-delegable.*"

- f) Referring to a further CAS decision (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI), the FEI argued that what the PR did not do was as fatal (lack of knowledge regarding the administration of a Prohibited Substance) as what the PR did do. The CAS panel in that case had found that *"it is not unreasonable to expect of the rider that, even if he has had no previous experience with the horse, to request inspection of the medical and nutritional records prior to the event. In so doing the PR serves as an independent "controller" of the condition of the horse and acts in the horse's welfare"*.
- g) Despite that the PR was an amateur rider who has stated that she cared a lot about her horses and the fact that her groom administered the substances to the Horse to treat its stiffness, the FEI was of the opinion that the PR cannot avoid strict liability solely on this basis. The PR should have made some basic inquiries with both grooms to check if any Prohibited Substances had been administered to the Horse prior to the competition in question, particularly given that one can assume based on the statement that the Horse was "old and stiff" that it may have been commonplace to treat the Horse with the medication products in question. The PR's status as an amateur rider was irrelevant to the present case; the Event was an FEI Event and, therefore, the PR, like all other competitors, was required to comply with all applicable FEI rules and regulations, including the EADCMRs.
- h) Furthermore, the PR could not simply try to escape punishment by claiming that the groom in question made an "independent decision". The FEI, through the FEI Clean Sport Programme and in particular the "Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations" (the "**Athlete's Guide**") had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. Furthermore, that the panel in the CAS decision previously mentioned, *i.e.*, CAS 2015/A/4190, had stated that the Athlete's Guide *"contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form"*, describing the Athlete's Guide as *"required reading"*. In this respect, the FEI also provided a copy of the Athlete's Guide.
- i) Finally, that making the PR prima facie responsible for the condition of the Horse while competing, subject to her ability to prove she bears No (Significant) Fault or Negligence for the rule violation was a reasonable and justifiable stance. In this respect, CAS (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI) had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, namely to *"... protect the welfare of the horse, and to ensure fair play..."*.
- j) Pursuant to Article 9 of the EAD Rules, the result of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes.
- k) As fairness did not dictate that no fine be levied in the case at hand,

the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she was the rider of the Horse at the Event.

## **9. The Decision**

- 9.1 As stated 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 LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of 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 finding. Flunixin, Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of Flunixin, Phenylbutazone and Oxyphenbutazone during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the ECM Rules.
- 9.3 In cases brought under Article 2.1 of the ECM Rules, 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 she bears "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 9.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substance entered

the Horse's system. This element is a prerequisite to the application of Article 10.4 or 10.5 of the ECM Rules.

- 9.5 To start with the Tribunal takes note of the PR's explanations on how the Flunixin, Phenylbutazone and Oxyphenbutazone had entered the Horse's system, namely by administering some "*aspirine*" (one spoon) and one dose of the product "*Equipalazone*" (Spanish name "EQ") to the Horse two days prior to sampling. In this respect the Tribunal presumes that the product Equipalazone contains the Prohibited Substances found in the Horse's sample; no such information has been provided to the Tribunal. The Tribunal takes however note that the FEI is satisfied that the PR has established how the Controlled Medication Substances entered the Horse's system. The Tribunal therefore finds that the PR has established - on a balance of probability, as required under Article 3.1 of the ECM Rules - how the Prohibited Substances had entered the Horse's system.
- 9.6 In a second step the Tribunal needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation.
- 9.7 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 without a valid Veterinary Form. The Tribunal finds that the PR has been highly negligent in performing her duties as a competitor for several reasons.
- 9.8 To start with, the Tribunal takes note that the PR seemed to not have taken any steps to avoid that no Controlled Medication Substance entered the Horse's body. In fact the PR states herself that she did not inquire with the groom(s) whether any Prohibited Substances had been administered to the Horse prior to the Competition in question.
- 9.9 Further, the Tribunal finds that the PR seems to have had no system in place, which required registering medications and supplements given to the Horse during an event. If such a system were in place, not only the PR but also the second groom would have known that the first groom had administered Controlled Medication Substances to the Horse, and could have alerted the PR and/or potentially requested for a Veterinary Form for the respective substances.
- 9.10 In line with its previous decisions, the Tribunal holds that the PR cannot be discharged of this duty - her personal duty as a rider to ensure that no Controlled Medication Substances are present in the Horse's body during an event without a valid Veterinary Form - even when not having been in charge of preparing the Horse for the Event or a respective Competition. It is the PR's duty as a competitor to make inquiries whether the Horse was free of Prohibited Substances, and put measures in place to assure that she is informed of all medications administered to the Horse. This seems to however not have been the case in the case at hand.

- 9.11 Furthermore, the Tribunal holds that – in line with its previous decisions - Persons Responsible are responsible for their Support Personnel and the medical treatment given by them to their horses. In the case at hand the Tribunal finds that – under the ECM Rules - the PR has to assume responsibility for the actions taken by the groom(s).
- 9.12 Moreover, the Tribunal holds that the fact that the PR is an amateur rider, and has only started riding four (4) years ago, is irrelevant in the case at hand. The Tribunal finds in this respect that the EADCMRs are applicable to all riders participating in FEI competitions, no matter whether professional or amateur riders. Thus the personal duty of professional and amateur riders is the same with regard to ensuring that no Controlled Medication Substances are present in horses during events without a valid Veterinary Form.
- 9.13 Finally, the Tribunal finds that the PR – even though only an amateur rider – had to make herself familiar with all relevant rules and regulations, including the EADCMRs, when competing in FEI competitions; even more so since she seems to have been riding, and potentially also competing, for a number of years.
- 9.14 Accordingly, the Tribunal finds that the PR has acted highly negligent in performing her duties as a competitor. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

## **10. Disqualification**

For the reasons set forth above, the Tribunal disqualifies 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.

## **11. Sanctions**

- 11.1 In accordance with Article 10.2 of the ECM Rules, the period of Ineligibility for a violation of Article 2.1 of the ECM Rules shall be six (6) months. The Tribunal takes note that the PR has been provisionally suspended from 15 December 2015 until and including 15 June 2016, *i.e.*, six (6) months. The Tribunal takes also note that no violation of the Provisional Suspension has been brought forward by the FEI. Further, that the UKR-NF confirmed on 21 April 2016, that the PR has followed the conditions of the Provisional Suspension, and not competed in any national or international event since 16 December 2015. The Tribunal therefore finds that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed.
- 11.2 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 **six (6) months** for the present rule violation. The period of Provisional Suspension, effective from 15 December 2015, the date of imposition of the Provisional Suspension, to 15 June 2016, the date of the lifting of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore no further period of Ineligibility shall be imposed on the PR.
- 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
- 3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of the judicial procedure.

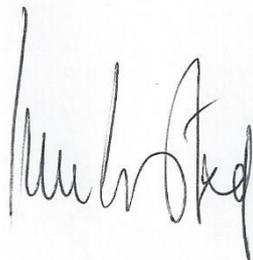
11.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

11.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) 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**



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**One member panel, Mr. Erik Elstad**