



## **DECISION of the FEI TRIBUNAL**

**dated 30 August 2013**

**Positive Controlled Medication Case No.:** 2012/CM09

**Horse:** TENNESSEE W

**FEI Passport No:** NED40253

**Person Responsible:** Fidel Segovia/ARG/10042037

**Event:** CSI2\*- Arezzo (ITA)/2012\_CI\_0516\_S\_S\_01

**Date:** 6 - 9 September 2012

**Controlled Medication Substance:** Salicylic Acid

### **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, as also made available by and to the PR.

**3. Oral hearing:** none

### **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:** Mr. Fidel Segovia

**3. Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADPHA), 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**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced. Additional facts and allegations found in the Parties' written submissions 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 TENNESSEE W (the "Horse") participated at the CSI2\* in Arezzo, Italy, from 6 - 9 September 2012 (the "Event"), in the discipline of Jumping. The Horse was ridden by Mr. Fidel Segovia (ARG), who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 9 September 2012.
- 1.3 Analysis of the blood sample no. 5516006 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. Selina Hines, Team Leader, under the supervision of Mr. Steve Maynard, Director. The analysis revealed the presence of Salicylic Acid at a concentration greater than 15 micrograms per millilitre in the sample (Certificate of Analysis 77389 dated 27 September 2012).
- 1.4 The Prohibited Substance detected is Salicylic Acid. Salicylic Acid is a non-steroidal anti-inflammatory drug. The internationally agreed threshold for Salicylic Acid is 6.5 micrograms per millilitre in plasma. Salicylic Acid – provided it is detected in a Horse's sample at a level above the mentioned threshold – is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Salicylic Acid to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") had been provided to the PR for the use of the substance on the Horse. Therefore, the positive finding for Salicylic Acid in the Horse's sample at the Event gives 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 the PR had already been charged for a Controlled Medication Rule violation in June 2009, and is therefore not considered a first time offender within the meaning of Article 8.3.1 (b) of the ECM Rules. Under Article 8.3.1 (b) of the ECM Rules, to be considered as first-time offenders, Persons Responsible have to have no record of any EAD or ECM Rules violations, or violations of any predecessor rule, without any pending or concluded cases, within the last eight (8) years preceding the Sample which caused the Adverse Analytical finding.

## **2. The Proceedings**

- 2.1 The presence of the Prohibited Substance following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the Federacion Equestre Argentina ("ARG-NF"), by the FEI Legal Department on 23 October 2012.
- 2.2 In the Notification Letter, the PR was also informed that due to the fact that he had been held responsible in 2009 for a Controlled Medication rule violation (Case 2009/FT29 – URBAN), the period of Ineligibility to be at the discretion of the Hearing Panel, who shall in every case render increased penalties for multiple violations up to and including three (3) years Ineligibility, if so warranted (see Articles 10.2 and 10.6.1 of the FEI ECM Rules).

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

- 3.1 Together with the Notification Letter of 23 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 8 January 2013, the PR, through the ARG-NF, admitted having administered "some aspirin" to the Horse as a preventive measure while travelling from Belgium to the Event, as the Horse had had fever. The PR further stated that he had no bad intentions when administering the medication.
- 4.2 On 29 January 2013, the FEI submitted its Response to the PR's explanations. Together with its submission, the FEI provided a FEI registration showing that the PR was also the owner of the Horse. Further, the FEI submitted the schedule and results of the Event and its individual competitions. The document included results of the PR together with the Horse in various competitions at the Event. The results further showed that the PR had competed with three (3) other horses (called WRANGLER II, SENNA GV and VLORIEN) at the Event.
- 4.3 In essence the FEI submitted:
  - a) That the PR had not disputed that the Controlled Medication

Substance Salicylic Acid at a concentration greater than 15 micrograms per millilitre was present in the blood sample collected from the Horse at the Event, and that it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.

- b) That no elimination or reduction under Article 10.4 of the ECM Rules was applicable, as the PR had not established by a balance of probabilities how the Prohibited Substance had entered the Horse's system. In this context, the FEI argued that the PR had neither submitted any evidence, nor provided any further details in support to his allegations that the Controlled Medication Substance Salicylic Acid had entered the Horse's system through the administration of aspirin. That further, the Tribunal had to take into consideration that the PR had not consulted any veterinarian on the treatment administered to the Horse, or taken any other measures in order to ensure that the Horse competed free of Prohibited Substances. And that as owner of both the Horse and the horse URBAN, the PR had an additional responsibility for the horses, and had to be more attentive to their medication history.
- c) With regard to the PR's remark that there had been no bad intention, the FEI highlighted that in light of the strict liability concept embedded in Article 2.1 of the ECM Rules, it was irrelevant whether or not there had been any intent of the Rule violation.
- d) That an increased period of Ineligibility of up to and including three (3) years pursuant to Articles 10.2 and 10.6 of the ECM Rules had to be imposed, as the PR had already committed a violation of the ECM Rules in 2009, when the horse URBAN, ridden and owned by him, had tested positive for two metabolites of Acepromazine, and for which the PR had accepted the sanctions offered to him under the Fast-Track procedure.
- e) Finally, as the PR had competed at several competitions of the Event with the Horse, and as it was likely that the Controlled Medication Substance Salicylic Acid had been present in the Horse's system while competing in those others competitions at the same Event, all other results of the PR with the Horse at the Event should also be disqualified, pursuant to Articles 9 and 10.1 of the ECM Rules. With regards to the results obtained by the PR with the other horses at the Event, the FEI requested that given the circumstances, i.e. the fact that it was the PR's second rule violation, that he had not provided sufficient information regarding the source of the Prohibited Substance and that he had not established the prerequisites of Article 10.1.1 of the ECM Rules, all those results should be disqualified too, under Article 10.1 of the ECM Rules.

- 4.4 On 25 July 2013, the PR further explained that the medication aspirin had been administered to the Horse with the sole intention to protect the health of the Horse. That a veterinarian had recommended the medication in order to avoid that the Horse's fever would further get higher.

## **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 Articles 2.1.2 and 2.1.3 of the ECM Rules, in cases of Threshold Prohibited Substances, sufficient proof of an ECM Rule violation is established by the presence in the Horse's A-Sample of a Controlled Medication Substance above the applicable threshold, provided that – as in the present case – 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 further satisfied that the test results evidence the presence of Salicylic Acid above the applicable threshold 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, and did not request for the B-Sample analysis to be performed. Salicylic Acid, at a level above 6.5 micrograms per millilitre in plasma, is classified as Controlled Medication Substance under the Equine Prohibited Substances List.
- 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 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.

- 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 Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.
- 7.5 The Tribunal takes note of the PR's explanations as to how the Controlled Medication Substance Salicylic Acid had allegedly entered the Horse's system, namely by administering the medication aspirin to the Horse on advice of a veterinarian. The Tribunal understands in this respect that aspirin contains the substance Salicylic Acid. The Tribunal however finds that these explanations are very vague, in particular as no evidence on the aspirin treatment has been provided. That further no details of the alleged treatment, such as the exact date and time of administration, the route of administration, or the dose of administration, had been made available. The Tribunal further takes note that the alleged advice of the veterinarian is not proven either by a respective declaration of the veterinarian in question, or by similar means. The Tribunal therefore holds that the PR has not established by “a balance of probability”, as required under Article 3.1 of the ECM Rules, how the Prohibited Substance has entered the Horse's system.
- 7.6 However, even if the Tribunal would find that the PR has established how the Controlled Medication Substance had entered the Horse's system, the Tribunal nevertheless holds that the PR had been highly negligent for several reasons. 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 Prohibited Substance is present in the Horse's body. The PR however, despite having been already charged for a Controlled Medication Rule violation in 2009, was apparently still not familiar with the EADCMRs, as would have been required from him as an athlete and owner of horses, and as owner of the Horse that had allegedly been under his supervision prior to the Event. The Tribunal further finds that even if the PR had administered the Prohibited Substance on the advice of a veterinarian – which the Tribunal does not consider to be proven – this would not release him from his responsibility to ensure that no Prohibited Substance is present in the Horse's body.
- 7.7 Further, the Tribunal takes note of the PR's explanations that the Prohibited Substance had been administered to the Horse with the sole intention to protect the health of the Horse, and in order to avoid that the Horse's fever was rising. The Tribunal however holds in this respect, that it is of little relevance

whether or not the PR had intended to enhance the Horse's performance, as for a violation of Article 2.1 of the ECM Rules, no intention was needed, as the mere presence of a Controlled Medication Substances constituted an Anti-Doping Rule violation.

- 7.8 Accordingly, the Tribunal finds that the PR has acted highly negligently in performing his duties as competitor and Horse owner. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 7.9 In deciding the sanctions, the Tribunal takes note that the PR had already been charged for a violation of the ECM Rules in 2009. Therefore, the Tribunal holds that an increased period of Ineligibility pursuant to Articles 10.2 and 10.6 of the ECM Rules is to be imposed.

## **8. Disqualification**

- 8.1 For the reasons set forth above, the FEI 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. The Tribunal is further disqualifying all of the Person Responsible's individual results obtained in the Event, with any and all Horses with which the PR competed, including the Horse, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1 of the ECM Rules.

## **9. Sanctions**

- 9.1 The FEI 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 **ten (10) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **29 June 2014**.
  - 2) The PR is fined **CHF three thousand (CHF 3000,-)**.
  - 3) The PR shall contribute **CHF five hundred (CHF 500,-)** towards the legal costs of the judicial procedure.

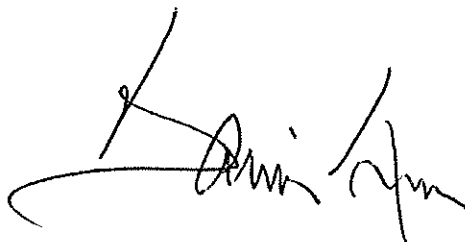


- 9.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized 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.
- 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 black ink, appearing to read 'Henrik Arle', is written over a horizontal line.

**One member panel, Mr. Henrik Arle**