



## **DECISION of the FEI TRIBUNAL**

**dated 29 July 2015**

**Positive Anti-Doping Case No.:** 2014/BS01

**Horse:** IN SITU                      **FEI Passport No:** QAT/FRA40513

**Person Responsible/NF/ID:** Ali Yousef J Y Al Kubaisi/QAT/10089523

**Event/ID:** CEI2\* - 120 km – Doha, Mesaieed (QAT)/ 2014\_CI\_1097\_E\_S\_02\_01

**Date:** 22 February 2014

**Prohibited Substance:** Propoxyphene

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

Ms. Jane Mulcahy QC, Chair  
Mr. Erik Elstad, Panel Member  
Ms. Randi Haukebó, Panel Member

### **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.

### **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 7 November 2013 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 16 January 2014, 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"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Ali Yousef J Y Al Kubaisi

**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)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD 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 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 IN SITU (the "Horse") participated at the CEI2\* - 120 km, in Doha, Mesaieed, Qatar, on 22 February 2014 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Ali Yousef J Y Al Kubaisi who is the Person Responsible in accordance with Article 118.3 of the GRs

(the "PR").

- 1.2 The Horse was selected for sampling on 22 February 2014.
- 1.3 Analysis of urine and blood sample no. 5527766 taken from the Horse at the Event was performed at the FEI approved laboratory, Laboratoire des Courses Hippiques ("LCH"), in France. The analysis of the urine sample revealed the presence of Propoxyphene.
- 1.4 The Prohibited Substance detected is Propoxyphene. Propoxyphene is a pain killer with local anaesthetic properties. Propoxyphene is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "Prohibited Substances List"). Therefore, the positive finding for Propoxyphene in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

## **2. The Further Proceedings**

- 2.1 On 7 April 2014, the FEI Legal Department officially notified the PR, through the Qatar Equestrian Federation ("QAT-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences of such violation. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. Together with the Notification Letter the PR also received the Laboratory Documentation Package for the A-Sample.
- 2.2 The Notification Letter further included notice to the owner of the Horse – Al Shaqab – that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two months, from the date of Notification, i.e. 7 April 2014, until 6 June 2014. The above Provisional Suspension of the Horse has not been challenged by the owner, and the Horse has served the entire period of Provisional Suspension.
- 2.3 Upon request by the PR, a Preliminary Hearing took place on 17 April 2014. During the Preliminary Hearing, the PR explained that he could not explain the source of the Propoxyphene, but that an investigation had been launched at the Horse's stable in order to determine the source of the positive test result. The Preliminary Hearing Panel noted that the presence of a Prohibited Substance in the Horse's sample was not denied nor was lifting of the Provisional Suspension requested at that time. The Provisional Suspension was therefore maintained.

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

- 3.1 Together with the Notification Letter of 7 April 2014, the PR was also informed that he was entitled to request (i) the performance of a B-Sample confirmatory analysis on the positive sample; (ii) attend or be

represented at the B-Sample analysis; and/or (iii) request that the B-Sample be analysed in a different laboratory than the A-Sample.

- 3.2 On 16 April 2014, the PR requested the B-Sample analysis be performed in the same laboratory as the A-Sample analysis. The PR did not request to attend the identification, opening and analysis of the B-Sample.
- 3.3 Between 24 and 28 April 2014 the B-Sample analysis was performed on the urine sample by Mr. Yohan Glavieux, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director of LCH.
- 3.4 The B-Sample analysis confirmed the presence of Propoxyphene.
- 3.5 On 13 May 2014, the results of the B-Sample analysis were notified to the PR and to the owner of the Horse, through the QAT-NF.

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

- 4.1 On 27 May 2014, the PR submitted his explanations for the positive finding. Together with his explanations, the PR submitted witness statements by himself, Dr. Silvio Antonio Arroyo dos Santos Filho, Senior Veterinarian at Al Shaqab stables, and Mr. Christian Lozano, Endurance Technical Advisor for the Qatar Organizing Committee.
- 4.2 In his statement, Dr. Filho explained that, in the year prior to the Event, the Horse had not shown any clinical problem or condition requiring treatment with any Prohibited Substances. Further he had not administered any Prohibited Substances to the Horse.
- 4.3 Mr. Lozano stated that he intended to support the PR as in his opinion he deserved support. He had met the PR in each competition organised by the Qatar Organizing Committee in 2014, and that the PR was always smiling, polite and had never complained about any decisions taken by the officials. Further the PR was not the owner, trainer or veterinarian of the Horse. Rather he had been riding for Al Shaqab stables and simply competed with the wrong horse at the wrong moment. Finally his view was that the PR had no idea how to medicate a horse.
- 4.4 In essence, the PR submitted that:
  - a) He had competed in the sport of Endurance for less than two years and still had a lot to learn. Further, he fully respected the FEI rules and had no experience or knowledge with respect to medicines given to horses.
  - b) He was "just" the rider and trusted the training and veterinarian team to follow the FEI rules. The Horse had been allocated to him shortly prior to the ride by the Al Shaqab stables and hence the horse could potentially have been allocated to another rider.

- c) The Horse had been stabled in one of the most modern commercial stables with advanced facilities, such as air-conditioning and surveillance cameras.
- d) The present case had made him aware of his responsibilities as rider, and that he would be more vigilant in the future, i.e. he would double check each time with veterinarians and trainers prior to riding a horse attributed to him whether Prohibited Substances had been administered and whether any administration of Prohibited Substances had been in accordance with FEI Rules and Regulations.

## **5. Written submissions by the FEI**

5.1 On 17 July 2014, the FEI provided its Response to the PR's submission. In essence the FEI argued that:

- a) The PR had not disputed that the Banned Substance Propoxyphene had been present in the 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 EAD Rules.
- b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules – which mirrored the World Anti-Doping Code - that it had been deliberately administered to the horse in an illicit attempt to enhance its performance. As a result of this presumption of fault, and unless a PR was able to rebut the presumption, according to Article 10.2 of the EAD Rules a period of Ineligibility of two years applied to a first time offender in case of an Article 2.1 of the EAD Rules violation. The PR had to establish to the satisfaction of the Tribunal - on the balance of probability (i) how the Propoxyphene had entered the Horse's system, and (ii) that he bore No Fault or Negligence for that occurrence, i.e. that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Banned Substance, or (iii) that he bore No Significant Fault or Negligence for that occurrence. Therefore, to sustain his plea of No (or No Significant) Fault or Negligence, the PR had to provide clear and convincing evidence that proved how the Propoxyphene had entered the Horse's sample. In fact his only explanation had been that the Horse had been allocated to him shortly prior to the ride by the Horse's stable. If the PR thereby intended to express that he had no contact with the Horse prior to competing, and therefore had not been in a position to administer any Prohibited Substances, that was not sufficient to meet the requirement of establishing the source of the Propoxyphene in the Horse's sample.
- c) As a result, the presumption of intentional administration had not been rebutted and therefore any plea under Article 10.4 of the EAD

Rules plea had to be rejected and the standard two-year sanction prescribed by Article 10.2 of the EAD Rules had to be applied. Moreover the PR had not submitted any information concerning his Fault or Negligence for the rule violation.

d) Regarding fine and costs, the FEI requested that a fine of fifteen thousand (15,000) Swiss Francs (CHF) be imposed on the PR according to Article 2.1 of the EAD, as fairness did not dictate otherwise. Further it asked that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing the matter. Lastly, that in accordance with the FEI Veterinary Regulations and the FEI Standard for Laboratories, the PR was liable to pay the costs of the B-Sample analysis.

## **6. Additional submissions by the Parties**

- 6.1 On 9 September and 20 October 2014, the PR provided two statements by Mr. Abdul Aziz Al Jabir, trainer of the Horse. In his statements, Mr. Al Jabir explained that - without the PR's knowledge - he had orally administered one tablet of the product "DARVOCET-N 100 mg" to the Horse twenty-four hours prior to the Competition of 22 February 2014. Moreover he assumed full responsibility for administering the Banned Substance, and assured that such incidents would not be repeated in the future. Mr. Al Jabir further confirmed that the PR had no knowledge of horse medication or treatment, and that he, as trainer, and the veterinary team were responsible for any veterinary treatments.
- 6.2 On 13 November 2014, the FEI invited Mr. Al Jabir to provide further details on (i) the exact time of administration, (ii) the location of the administration, and (iii) the source of the product, i.e. by whom Mr. Al Jabir had received the product, or how he had otherwise obtained it.
- 6.3 On 8 February 2015, Mr. Al Jabir explained that in his earlier statements he had provided the wrong information. Specifically, that it was not DARVOCET-N that was administered to the Horse, but a product called "FUSTEX", produced by the company Chinfield from Argentina. The Banned Substance Propoxyphene had not been listed on the outside label prescription, and the same kind of incident had happened to others before with FUSTEX. He stated that 1 ml of the product had been administered to the Horse by intramuscular injection during the morning hours before the vet check on 21 February 2014.
- 6.4 On 22 April 2015, the FEI provided an additional Response. In essence the FEI argued that in its opinion the PR had not established the source of the Prohibited Substance for reasons outlined below. Firstly, it noted that Mr. Al Jabir in his last statement had entirely changed his evidence about the alleged administration, and that he was now claiming that a different product as well as a different dose had been administered, and that the administration had taken place one day earlier than in his first two statements. Further, insofar as Mr. Al Jabir

had not provided any reasons for the sudden change of explanation and no supporting evidence (such as an Entry in the FEI Medication Logbook or similar) for the alleged administration, it was the FEI's position that the statements lacked credibility, and could therefore not be considered as sufficiently clear and convincing evidence that proved how the Propoxyphene had entered the Horse's system.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event. The Tribunal further finds that under the EAD Rules, a rider cannot transfer his responsibilities to another person, such as the trainer, even if this other person accepted these additional responsibilities.

## **9. The Decision**

- 9.1 The Tribunal is satisfied that the laboratory reports relating to the A- and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Propoxyphene in the urine sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Propoxyphene is classified as a Banned Substance under the FEI Equine Prohibited Substances List.
- 9.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.
- 9.3 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and the PR has the burden of proving that he bears "No Fault or Negligence" for the positive finding as set forth in Article 10.4.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.4 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a

balance of probability”.

- 9.4 The Tribunal takes note that the PR himself has not provided any explanation of how the Propoxyphene entered the Horse’s system. The Tribunal further notes the statements provided by Mr. Al Jabir in this respect, and also of the change in his explanations, in particular as regards the product allegedly administered to the Horse. The Tribunal finds that, given that Mr. Al Jabir has changed his explanations without providing any reasons, or explanations for the change, Mr. Al Jabir’s statements lack credibility. The Tribunal therefore finds that Mr. Al Jabir’s statements are not sufficient to establish the source of the Prohibited Substance. In the absence of any other evidence, such as for example records of medication(s) administered to the Horse in the FEI Medication Logbook, the Tribunal holds that the PR has not established – by a balance of probability – how the Propoxyphene entered the Horse’s system.
- 9.5 However, even if the Tribunal had accepted that the PR had established how the Propoxyphene entered the Horse’s system, the Tribunal would nevertheless hold that the PR has not established that he bears “No (Significant) Fault or Negligence” for the rule violation. In this respect the Tribunal holds that – in accordance with Article 2.1 of the EAD Rules - it is the PR’s personal duty to ensure that no Banned Substance is present in the Horse’s body at any stage. The Tribunal finds that the PR has not established that he had fulfilled the duty of care expected of him as a rider: all he did was rely on the trainer and veterinary team without making any further enquiry or taking any other precautionary measures.
- 9.6 Finally, the Tribunal clarifies that, as held in previous decisions (i.e. TACKERAY, Final Tribunal Decision, dated 14 September 2009), Persons Responsible are responsible for their support personnel and the medical treatment given to their horses by their veterinarians. The Tribunal therefore finds that the negligence of Mr. Al Jabir relied on by the PR is attributable to the PR in the case at hand.
- 9.7 In conclusion, the Tribunal finds that the PR has not succeeded in establishing that he bears No (Significant) Fault or Negligence for the rule violation.
- 9.8 Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the EAD Rules.
- 9.9 The Tribunal considers that the Provisional Suspension of the Horse of two (2) months, imposed by the FEI at the beginning of the proceedings, was rightfully imposed in accordance with Article 7.4 of the EAD Rules, as the Horse’s A-Sample and B-Sample tested positive for a Banned Substance.



## 10. Disqualification

- 10.1 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 EAD Rules.

## 11. Sanctions

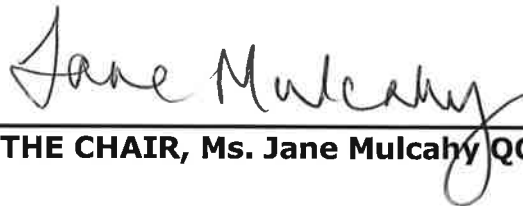
- 11.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. The Tribunal finds that based on the Case File, the PR is a first time offender under the meaning of the EAD Rules, since he has committed no previous violation. Further as there are no reasons for reducing the period of Ineligibility, the Tribunal is imposing a period of Ineligibility of two years on the PR.
- 11.2 As set forth in Article 10.2 of the EAD Rules, and unless fairness dictates otherwise, a fine of CHF 15,000 is foreseen for an EAD Rule violation. When deciding the fine the Tribunal takes into consideration the Prohibited Substance detected and the degree of Negligence by the PR.
- 11.3 The Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years** for the present rule violation. The period of Provisional Suspension, effective from 7 April 2014, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 6 April 2016**.
  - 2) PR is fined **one thousand Swiss Francs (CHF 1'000,-)**.
  - 3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the legal costs of the judicial procedure, as well as the cost of the B-Sample analysis.
- 11.4 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or 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 organized by the FEI or any National Federation, or participate in any capacity at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.9.1 of the EAD Rules). Under Article 10.9.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

- 11.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 11.6 In accordance with Article 12 of the EAD Rules, the Parties 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: the owner of the Horse**

**FOR THE PANEL**



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**THE CHAIR, Ms. Jane Mulcahy QC**