



DECISION of the FEI TRIBUNAL

dated 22 October 2013

Positive Anti-Doping Case No.: 2013/BS01

Horse: ORMAN DE CARDONNE

FEI Passport No: UAE41187

Person Responsible/NF/ID: Mohd Ali Al Shafar/UAE/10000377

Event/ID: CEI3* 160 km, Abu Dhabi, Al Wathba (UAE), 2013_CI_9878_E_S_01

Date: 16 February 2013

Prohibited Substance: 17-alpha-hydroxyprogesterone hexanoate

I. COMPOSITION OF PANEL

Ms. Randi Haukebø, Chair
Prof. Dr. Jens Adolphsen, Panel Member
Mr. Henrik Arle, 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.

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 23rd edition, effective 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 143.1, 161, 168 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 2013.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2013, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Mohd Ali Al Shafar

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 – 2.7 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 ORMAN DE CARDONNE (the "Horse") participated at the CEI3* 160 km in Abu Dhabi, Al Wathba, United Arab Emirates, on 16 February 2013 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Mohd Ali Al Shafar 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 16 February 2013.
- 1.3 Analysis of blood sample no. 5517277 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC") by Ms. Nola Hua Yu, Chemist under the supervision of Mr. Terence See Ming Wan, Head of Racing Laboratory. The analysis of the blood sample revealed the presence of 17-alpha-hydroxyprogesterone hexanoate (Test report no. 13-0271 dated 27 February 2013).
- 1.4 The Prohibited Substance detected is 17-alpha-hydroxyprogesterone hexanoate. 17-alpha-hydroxyprogesterone hexanoate is an anabolic steroid, which stimulates growth (including muscle) and appetite. It has a similar effect as Testosterone in the Horse's body. 17-alpha-hydroxyprogesterone hexanoate – provided it is detected in the sample of a male horse – is classified as a Banned Substance under the Equine Prohibited Substances List. The Horse is registered as a male horse. Therefore, the positive finding for 17-alpha-hydroxyprogesterone hexanoate in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 12 March 2013, the FEI Legal Department officially notified the PR, through the United Arab Emirates Equestrian & Racing Federation ("UAE-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. 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 Tribunal.
- 2.2 The Notification Letter further included notice to the owner of the Horse – the Al Reeh endurance stable – that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, i.e. 12 March 2013, until 11 May 2013. 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.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 12 March 2013, 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 By letter dated 15 March 2013, the PR requested the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
- 3.3 From 3 to 8 April 2013, the B-Sample analysis was performed at the Horseracing Forensic Laboratory Sport Science Ltd. (UK) ("HFL") by Mr. Adam Clarke, Senior Scientist, under the supervision of Mr. Simon Hudson, Principal Scientist.
- 3.4 The B-Sample analysis confirmed the presence of 17-alpha-hydroxyprogesterone hexanoate (Certificate of Analysis no. 81295 dated 8 April 2013).
- 3.5 The results of the B-Sample analysis were provided to the PR and to the owner of the Horse by the FEI Legal Department through the UAE-NF on 9 April 2013.

4. The further proceedings

- 4.1 Together with the notification of the B-Sample results of 9 April 2013, the FEI invited the PR to provide further explanations or evidence regarding the positive finding.
- 4.2 On 20 July 2013, the PR explained that no medication containing the substance 17-alpha-hydroxyprogesterone hexanoate had been available at the Al Reeh endurance stable, where the Horse had been stabled. Further that in general no medication containing any Prohibited Substances had been at his disposal at the stable, as he and everybody else at the stable strongly believed in true and fair sporting activities. Finally, the PR submitted that he did not wish to provide any further explanations regarding the positive finding to the Tribunal, and that he would accept any decision the Tribunal took in the case at hand. Nonetheless, he requested that the Tribunal took into consideration that no horse from the Al Reeh endurance stable had ever tested positive in the past.
- 4.3 The FEI did not submit a response to the PR's explanation and on 30 August 2013, the case was submitted by the FEI to the Tribunal for consideration and decision.

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD 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 was the rider of the Horse at the Event.

7. The Decision

- 7.1 The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both HKJC and HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of 17-alpha-hydroxyprogesterone hexanoate in the samples taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. 17-alpha-hydroxyprogesterone hexanoate - provided it is detected in a male horse - is classified as a Banned Substance under the FEI 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 Articles 2.1 of the EAD Rules. This is undisputed between the Parties.
- 7.3 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 findings 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".
- 7.4 The Tribunal finds that the PR has not provided any explanations on how the 17-alpha-hydroxyprogesterone hexanoate entered the Horse's system. In fact, the mere claim by the PR that no medication containing the Banned Substance 17-alpha-hydroxyprogesterone hexanoate would be available at the Al Reeh endurance stable is insufficient to establish the source of the Prohibited Substance. The Tribunal therefore finds that

the PR failed to establish how the Prohibited Substance entered the Horse's system.

- 7.5 Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the EAD Rules should be applied.
- 7.6 The Tribunal considers that the Provisional Suspension of the Horse of two (2) months, imposed by the FEI at the beginning of the proceedings, had been rightfully imposed in accordance with Article 7.4 of the EAD Rules, as the Horse's A Sample had tested positive for a Banned Substance. Under Article 7.4 of the EAD Rules, the FEI has the discretion to impose a Provisional Suspension of any period of time on the Horse.

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 EAD Rules.

9. Sanctions

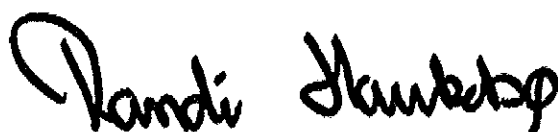
- 9.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. The Tribunal finds that based on the Case File, the PR is a first offender in the meaning of the EAD Rules, since he has not previously violated those EAD Rules. 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.
- 9.2 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** to be effective immediately and without further notice from the date of the notification of the present decision. The period of Provisional Suspension, effective from 12 March 2013, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 11 March 2015.
 - 2) The PR is fined **two thousand Swiss Francs** (CHF 2000,-).
 - 3) The PR shall contribute **one thousand Swiss Francs** (CHF 1000,-) towards the legal costs of the judicial procedure, as well as the cost of the B-Sample analysis, including the costs of the transport of the sample from HKJC to HFL.

- 9.3 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.
- 9.4 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned
- 9.5 An appeal may be lodged against this decision, in accordance with Article 12 of the EAD Rules, with the Court of Arbitration for Sport ("CAS"), within thirty (30) days of receipt of this decision.

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

A handwritten signature in black ink, reading "Randi Haukebo". The signature is written in a cursive, flowing style.

THE CHAIR, Ms. Randi Haukebo