



DECISION of the FEI TRIBUNAL

dated 21 November 2011

Positive Controlled Medication Case No.: 2011/CM01

Horse: CAMEO RENAZAR

FEI Passport No: UAE/ 40643

Person Responsible: Mohd Ali Mohd Saleh / UAE

Event: CEI2*-120km – Dubai, UAE

Prohibited Substances: Phenylbutazone, Oxyphenbutazone, Butorphanol
(Controlled Medication Substances)

1. COMPOSITION OF PANEL

Mr. Philip O'Connor, member (one member panel)

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 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.

2.3 Oral hearing: none

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 22nd edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1st edition, effective 5 April 2010.

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

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Mohd Ali Mohd Saleh

3.3 Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

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 - 2.7 below 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."

4. DECISION

4.1 Factual Background

1. CAMEO RENAZAR (the "**Horse**") participated at the CEI2*-120km - in Dubai (UAE), from 26 to 27 November 2010 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Mohd Ali Mohd Saleh, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 27 November 2010.
3. Analysis of the blood sample no. FEI-5501959 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), in Hong Kong (China), by Mr. Colton Ho Fai Wong, Chemist, under the supervision of Mr. David Kwan Kon Leung, Racing Chemist. The analysis of the sample revealed the presence of Phenylbutazone, Oxyphenbutazone and Butorphanol (Test Report n 10-1567 dated 13 December 2010).
4. The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Butorphanol. Phenylbutazone is a non-steroidal anti-inflammatory drug (NSAID), predominantly used as anti-inflammatory and analgesic. Oxyphenbutazone, a metabolite of Phenylbutazone, is a non-steroidal anti-inflammatory drug (NSAID) with anti-inflammatory and analgesic effects. Butorphanol, is an opiod

analgesic used for short duration analgesic. Butorphanol has sedative effect when combined with other substances. All three substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List.

5. No request had been made for the use of Phenylbutazone, Oxyphenbutazone and Butorphanol on the Horse, and no medication form had been supplied for these substances.

4.2 The Proceedings

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PR, through the United Arab Emirates Equestrian and Racing Federation ("UAE-NF"), by the FEI Legal Department on 18 January 2011.

4.3 The B-Sample Analysis

7. Together with the Notification Letter of 18 January 2011, the PR received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the B-Sample analysis, and to request that the B-Sample be analysed in a different Laboratory than the A-Sample.
8. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

9. In the absence of any reaction to the Notification Letter of 18 January 2011 or explanations by the PR within the deadlines stipulated in the Notification Letter, on 7 March 2011, the FEI enquired with the UAE-NF whether the PR had received the notification, and further invited the PR to provide explanations to the alleged violation within a new deadline.
10. By email of 28 March 2011, given that no explanations had been received in the meantime, the FEI again contacted the UAE-NF to enquire about the status of the proceedings.
11. By email of 29 March 2011, the UAE-NF explained that several requests had been sent to the PR, but that the PR's English was not good. The UAE-NF expressed the opinion that the case was to be treated as so-called "Fast Track" under the administrative procedure according to Article 8.3 of the ECM Rules and suggested that the PR would not submit anything anymore.
12. By email of the same date, the FEI explained that the case in question would not qualify for the administrative procedure under Article 8.3 of the ECM Rules insofar as more than one Controlled Medication Substance had been detected in the Horse's sample. The FEI further explained that given the circumstances of the case, a suspension of up to two (2) years could

be imposed on the PR by the FEI Tribunal, and suggested that somebody within the UAE-NF assisted the PR with the proceedings, in particular with regards to language difficulties.

13. On 30 March 2011, Dr. Ali Tweissi explained by email to the FEI that he had just joined the UAE-NF and that he had spoken to the PR and the trainer. That the PR had stated that he was new in the sport, and that he had given a paste containing "bute" to the Horse prior to the Event since the Horse had shown signs of colic. That the PR had thought that it would only have one day effect, and that he would not do anything similar anymore without having consulted a veterinarian.
14. By email of 26 October 2011, the FEI requested that the PR as the one upon whom sanctions would be imposed, submitted a signed document with the above explanations, provided he agreed to the statements.
15. By email of 10 November 2011, the UAE-NF explained that the PR was not answering his phone, but that the Horse's trainer would provide the requested information and signature.
16. By email of 11 November 2011, the FEI stressed again that the PR was the individual in question to provide the respective information and signature, not the trainer.
17. On 14 November 2011, the UAE-NF submitted the FEI Questionnaire completed by the PR. According to the responses provided, the Horse is owned by Dubai World Stable, and is trained by Yousef Al Hammadi. The PR explained having participated, prior to the competition in question, in a few 120km rides and one 160km ride. Further, that prior to the competition, the Horse had been treated by different veterinarians from Dubai Word Stable, but that he did not have any specific information about the Horse's treatments, and that the Prohibited Substance detected in the Horse's sample must have been given to the Horse by a veterinarian working at Dubai World Stable. The PR further stated that he and his colleagues were comparable to jockeys and that every weekend they ride different horses provided by the stable for which they are working. That he had however learnt from the case at hand, and that in the future, he will inquire with the respective horse trainer whether the horse had been treated. That however, even in the absence of answer he would continue riding the horse since this was his job.

4.5 Jurisdiction

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

4.6 The Person Responsible

19. 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.

4.7 The Decision

20. 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 HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Butorphanol in the sample taken from the Horse at the Event. Phenylbutazone, Oxyphenbutazone and Butorphanol are classified as Controlled Medication Prohibited Substances by the FEI Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.
21. 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.
22. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once a positive case has been established by the FEI, 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 ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.
23. 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 Prohibited Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. With regard to the standard of proof to be met by the PR, Article 3.1 of the ECM Rules, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".
24. In this context, the Tribunal takes note that the completed Questionnaire provided by the PR did not contain any explanation or evidence regarding the source of the Prohibited Substances detected in the Horse's sample. The Tribunal therefore holds that the PR has not established by a "*balance of probability*" how the Prohibited Substance entered the Horse's system. Accordingly, the Tribunal would not have to address the question whether the PR had established in accordance with ECM Rules Article 10.4.1 or Article 10.4.2 that he did not bear any Fault or Negligence for the rule violation. In the opinion of the Tribunal however, the degree of fault or negligence of the PR is difficult to access given the information provided. The PR has shown very little knowledge of the rules of the FEI, and shows even less signs of a determination to achieve regulatory compliance in the future. The Tribunal therefore holds that no reduction or elimination of the otherwise applicable period of Suspension is granted.
25. According to ECM Rules Article 9, a violation of the ECM Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.

26. 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.

4.8 Disqualification

27. 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 at the Competition must be forfeited, in accordance with Article 9 ECM Rules.

4.9 Sanctions

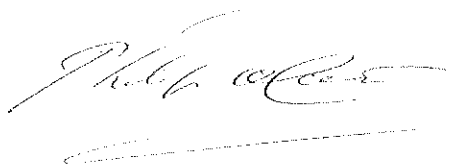
28. Under the applicable ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance is an Ineligibility period of up to two (2) years. Ever conscious of the paramount principle of the protection of the welfare of the Horse, the FEI Tribunal therefore imposes the following 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 **eight (8) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through 20 July 2012.
- 2) The PR is fined **CHF 1000.-**.
- 3) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

- 5.1 The person sanctioned: Yes**
- 5.2 The President of the NF of the person sanctioned: Yes**
- 5.3 The President of the Organising Committee of the Event through his NF: Yes**
- 5.4 Any other: No**

FOR THE PANEL



THE CHAIRMAN, Mr. Philip O'Connor