



## **DECISION of the FEI TRIBUNAL**

**dated 4 November 2010**

**Positive Doping Case No.:** 2010/01

**Horse:** LIENKA

**FEI Passport No:** UAE 41013

**Person Responsible:** Mohd Shabbir Khan

**Event:** CEI1\* 81km, Al Wathba, Abu Dhabi, UAE

**Prohibited Substances:** Stanozolol, 16- $\beta$ -Hydroxystanozolol

### **1. COMPOSITION OF PANEL**

Mr Patrick Boelens  
Mr Philip O'Connor  
Mr Hernán Mendez Cañas

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

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, 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 Shabbir Khan

### **3.3 Justification for sanction:**

GR 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."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

## **4. DECISION**

### **4.1 Factual Background**

1. LIENKA (the "**Horse**"), owned by Al Aasfa Stables, UAE, participated at the CEI1\* 81km, in Al Wathba, Abu Dhabi, in the United Arab Emirates (UAE), on 19 December 2009 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Mohd Shabbir Khan, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 19 December 2009.
3. Analysis of the blood sample no. FEI-5501993 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club ("**HKJC**"), by Ms. Jenny Ka Yan Wong, Chemist, under the supervision of Mr. David Kwan Kon Leung, Chief Racing Chemist. The analysis revealed the presence of Stanozolol and 16- $\beta$ -Hydroxystanozolol (Certificate of Analysis dated 28 December 2009).

4. The Prohibited Substances detected are Stanozolol and 16- $\beta$ -Hydroxystanozolol. Stanozolol is an anabolic steroid which improves energy levels and increases muscle mass. 16- $\beta$ -Hydroxystanozolol is a metabolite of Stanozolol. Stanozolol is classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "Doping". The presence of Stanozolol and 16- $\beta$ -Hydroxystanozolol in the Horse's sample thereby constitutes an *Anti-Doping* rule violation.
5. No request had been made to administer Stanozolol to the Horse, and no medication form had been submitted for this substance.

#### **4.2 The Proceedings**

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 18 January 2010.
7. 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.
8. The PR did not request a Preliminary Hearing.
9. The Notification Letter further included a request by the FEI that the Horse be suspended from competition insofar as it had already been subject to an anti-doping procedure in 2009 involving Etorphine. The FEI argued, in support of that request, that the Horse's suspension was an adequate means to preserve and protect the welfare of the Horse.

#### **4.3 The B-Sample Analysis**

10. Together with the Notification Letter of 18 January 2010, the PR also 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 identification and opening of the B-Sample.
11. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

#### **4.4 The Further Proceedings**

12. On 8 February 2010, Ms. Sue Sidebottom of Al Aasfa Stables and Assistant to Mubarak Khalifa bin Shafya, submitted a statement by Khalifa bin Shafya, Trainer and Manager at Al Aasfa Stables, and Dr. Mario Castro Guglielmone, the veterinarian responsible for the

Horse. In addition, the partially completed unsigned FEI Questionnaire by Ms Sidebottom, is part of the submission.

13. The PR himself did not submit any statement or explanation. Following inquiry by the FEI, Ms. Sue Sidebottom explained in an email dated 6 April 2010 that the PR had been questioned by Khalifa bin Shafya but that he had nothing to say.
14. In his statement of 7 February 2010, Khalifa bin Shafya declared that no Prohibited Substances had been administered to the Horse under his instruction, and that the Prohibited Substances found in the Horse's sample were not available to Al Aasfa Stables by the Stable's medicine supplier, the Dubai Equine Hospital. Further, that the PR had been suspended from his work and sent home to India in order to warn other staff members, but not because the PR was considered to be guilty. In order to support his contention, Khalifa bin Shafya attached a flight reservation confirmation for the PR. Khalifa bin Shafya further expressed the opinion that the open access to stables at FEI competitions needs to be affirmatively addressed by FEI officials.
15. Dr. Guglielmone, in his statement of 7 February 2010, stated that he was shocked about the positive test results since Stanozolol and 16- $\beta$ -Hydroxystanozolol are under strict control and not routinely distributed by the Dubai Equine Hospital. He also stated that he had seven years of experience working in this area of expertise and had never been involved in any doping case.
16. By its submission of 6 May 2010, the FEI highlighted that no explanation had been provided by or on behalf of the PR as to how the Prohibited Substances might have entered the Horse's system. In particular, that it had not been established how the alleged open access to the stables might have had an influence on the positive test result. Referring to Article 1005.2.4 of the FEI Veterinary Regulations and Article 118.6 of the FEI General Regulations, the FEI further argued that inadequate stable security would not diminish the Person Responsible's accountability for his horse or the results of medication control tests. The FEI further argued that the flight reservation confirmation was not sufficient evidence to prove that the PR had indeed been sent home, nor to explain the reasons for doing so. Lastly, the FEI pointed out that both Khalifa bin Shafya and Dr. Guglielmone had functioned as Manager and Trainer, and Veterinarian, respectively, in two 2009 anti-doping cases. That in those two earlier cases, no explanation had been provided by either Khalifa bin Shafya or Dr. Guglielmone for the presence of the Prohibited Substances in the horses' systems. The FEI concluded that the PR had not established that he did not bear any fault or negligence for the rule violation.

17. Following the FEI's Response, on 3 June 2010, a further statement by Khalifa bin Shafya dated 30 May 2010 was submitted by Al Aasfa Stables. In this statement, Khalifa bin Shafya explained that - following notification by the FEI of another positive anti-doping case of a horse in his care, also involving Stanazolol, KEDJARI DES SERRES 2010/02 - a bottle of Stanazolol was found on the premises of Al Aasfa Stables. That Dubai Police had been requested to investigate the matter, and that in the course of the investigations, fingerprints of Mohd Shabbir Khan had been found on the bottle. That furthermore, Mohd Shabbir Khan had rode both LIENKA and KEDJARI DES SERRES on a daily basis, and also sometimes in competition, and that therefore, Mohd Shabbir Khan should be considered the guilty party in both cases. Khalifa bin Shafya attached copies of the results of the Dubai Police investigation to his statement. The results included an analysis of the contents of the bottle found on the stable grounds, as well as an analysis of the fingerprints found on the bottle. Khalifa bin Shafya further objected to the FEI's request to suspend the Horse arguing that the Horse did not require any Prohibited Substances in order to compete.
18. The FEI responded to the supplemental explanations on 10 June 2010 by explaining that according to the Dubai Police reports, a vial was received by Dubai Police on 22 March 2010 containing Stanazolol. Another Dubai Police Report of the next day (23 March 2010) established that the fingerprints of Mohd Shabbir Khan were on that vial. The FEI concluded therefore that two different vials had apparently been provided to the police. That more importantly, the reports would not prove that Mohd Shabbir Khan had actually administered any Prohibited Substances to either of the two horses. The FEI further pointed out that the tests performed by Dubai Police did not satisfy normal standards of reporting analysis since no reference was made on the provenance of the samples tested or their discovery and that the bottles were described as being unsealed. The FEI therefore concluded that the PR had not established how the Prohibited Substances had entered the Horse's Sample.
19. On 9 July 2010, Al Aasfa Stables submitted another statement by Khalifa bin Shafya. In that statement, Khalifa bin Shafya explained that only one vial had been found and that two subsequent analyses had been performed on the vial by two different police departments, resulting in two separate reports.

#### **4.5 Jurisdiction**

20. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.6 The Person Responsible**

21. The PR is the Person Responsible for the Horse, in accordance with Article 118 of the GRs, as he was the rider of the Horse at the Event.

#### **4.7 The Decision**

22. 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 HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Stanozolol and 16- $\beta$ -Hydroxystanozolol, which are Prohibited Substances, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.
23. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substances found in the samples are therefore classified as "Doping" Prohibited Substances.
24. In Doping and Medication cases, a strict liability principle applies as described in Article 2.1.1 of the EADMCRs. Once a positive case has been proven by the FEI, the PR has the burden of proving that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.
25. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must first establish by "*a balance of probability*" (Article 3.1 of the EADMCRs) how the Prohibited Substances entered the Horse's body. The Tribunal finds that the evidence submitted in this case by Al Aasfa Stables in order to establish how the Prohibited Substances entered the Horse's body does not meet the burden of proof as described above. Specifically, the Tribunal considers that it has not established, by a balance of probability, that the PR is responsible for the presence of the Prohibited Substances. The two reports by Dubai Police, if at all, establish that a vial found on the grounds of Al Aasfa Stables contained Stanozolol, and the same, or a second vial found on the grounds of Al Aasfa Stables, showed the fingerprints of the PR. However, the reports do not unequivocally establish that the fingerprints found do indeed belong to the PR or that the PR was involved at all in the administration of any Prohibited Substances to the Horse. The Tribunal notes in this context that the PR has not submitted any declaration or statement himself to the Tribunal, and that there is no evidence that he had been observed by anybody administering any substances. In light of the above, and given the applicable standard of proof in this case, the Tribunal finds that the PR has

not established how the substances entered the Horse's system.

26. With regards to the question of fault or negligence, the Tribunal notes that the PR, since he did not testify nor did he provide any explanation, failed to establish that he bears "No Fault" and "No Negligence" or "No Significant Fault" and "No Significant Negligence".
27. According to Article 9 of the EADMCRs, disqualification from the Event is automatic when a positive violation has been proven.
28. With respect to the request to suspend the Horse, the Tribunal takes note that the submissions provided by Al Aasfa Stables do not indicate any specific instructions or precautions taken to ensure compliance with the EADCM Rules or FEI General or Veterinary Regulations. Further, that Al Aasfa Stables, despite the various anti-doping cases of horses stabled at Al Aasfa Stables, does not provide any information about measures being implemented in order to avoid the repeated breach of the FEI Rules or Regulations. In this context the Tribunal is concerned that neither Khalifa bin Shafya nor Dr. Guglielmone are in a position to unequivocally explain the occurrence of the 2009 and 2010 anti-doping cases of horses under their care and supervision. The Tribunal therefore concludes that a suspension of the Horse is adequate in order to preserve and protect its welfare.
29. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

30. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and PR combination from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 of the EADMCRs.

#### **4.9 Sanctions**

31. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:
  - 1) The PR shall be suspended for a period of **12 (twelve) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 18 January 2010 to 4 November 2010, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to

participate in FEI activities through **17 January 2011**.

- 2) The Horse shall be suspended for a period of **24 (twenty-four) months** to be effective immediately and without further notice from the date of the notification. Therefore, the Horse shall be ineligible to participate in FEI activities through **3 November 2012**.
- 3) The PR is fined **CHF 2.000.-**.
- 4) The PR shall contribute **CHF 1.000.-** 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**

A handwritten signature in blue ink, appearing to read 'Boelens', is written over a horizontal line.

**THE CHAIRMAN Patrick Boelens**