



## **DECISION of the FEI TRIBUNAL**

**dated 9 January 2013**

**Positive Controlled Medication Case No.:** 2012/CM02

**Horse:** JAWHARET AL PETRA                      **FEI Passport No:** JOR40163

**Person Responsible:** Haytham Suliman Falahat/JOR/10047885

**Event:** CEI2\*-120km – Wadi Rum (JOR)/2011\_CI\_0055\_E\_S

**Date:** 14 November 2011

**Controlled Medication Substances:** Phenylbutazone, Oxyphenbutazone, Dexamethasone

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

Dr. Armand Leone (one member panel)

### **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; by correspondence.

### **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 6 May 2011 ("Statutes"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1, 168.4 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 2011.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("VRs"), 12th edition, effective 5 April 2010, updates effective 1 January 2011, 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:** Haytham Suliman Falahat

**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)".

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**

##### **1. Factual Background**

1.1 JAWHARET AL PETRA (the "Horse") participated at the CEI2\*-120km in Wadi Rum, Jordan, on 14 November 2011 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Haytham Suliman Falahat, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").

- 1.2 The Horse was selected for sampling on 14 November 2011.
- 1.3 Analysis of the blood sample no. FEI-5508910 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club ("HKJC"), in Hong Kong by Mrs. Nola Hua Yu, Chemist, under the supervision of Dr. Terence See Ming Wan, Chief Racing Chemist. The analysis of the sample revealed the presence of Phenylbutazone, Oxyphenbutazone and Dexamethasone (Certificate of Analysis 11-1408 dated 29 November 2011).
- 1.4 The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Dexamethasone. Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and pain relief effect. Oxyphenbutazone is a metabolite of Phenylbutazone. Dexamethasone is a steroid used for pain relief and anti-inflammatory purposes. All three substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Phenylbutazone, Oxyphenbutazone and Dexamethasone to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") had been provided by the PR for the use of the substances on the Horse. Therefore, the positive findings for Phenylbutazone, Oxyphenbutazone and Dexamethasone in the Horse's sample at the Event give rise to a Controlled Medication Rule violation under the EADCMRs.
- 1.6 Under the ECM Rules, in cases 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 more than one Controlled Medication Substance had been detected in the Horse's sample.

## **2. The Proceedings**

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the Royal Jordanian Equestrian Federation ("JOR-NF"), by the FEI Legal Department on 2 February 2012.

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

- 3.1 Together with the Notification Letter of 2 February 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 4 September 2012, the JOR-NF informed the FEI that the PR had confirmed receipt of the Notification Letter and submitted the front page of the Notification Letter containing the PR's signature. By email of the same day, the FEI underlined that in cases of alleged violations of the EADCMRS, the rider and Person Responsible may provide his explanations for the rule violation, and that the FEI Tribunal will impose more or less severe sanctions, depending on the explanations.
- 4.2 Further on 16 October 2012, the FEI informed the PR through the JOR-NF that in absence of any written explanations by him by the end of October 2012, the case would be submitted to the FEI Tribunal for consideration and decision.
- 4.3 On 17 October 2012, the JOR-NF responded that the PR had been informed of all communications received and explained that he would provide explanations to the FEI within the deadline set. No explanations were submitted to the FEI within the deadline set, nor until the date of the present decision.

#### **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 Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. 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 Dexamethasone 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, and did not request for the B-Sample analysis to be performed. Phenylbutazone, Oxyphenbutazone and Dexamethasone are classified as Controlled Medication Substances 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 Substances 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 that the PR did not provide any information on how the Prohibited Substances entered the Horse's system, and therefore holds that the PR has not established how the Controlled Medication Substances entered the Horse's system. Accordingly, the Tribunal need not address the question of whether the PR has established that he bears no Fault or Negligence for the Rule violation. Furthermore, given the lack of information provided by the PR the Tribunal finds that the degree of Fault or Negligence of the PR for the rule violation is impossible to assess. The Tribunal therefore holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 7.6 In deciding the sanctions, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility. Since the Tribunal finds that the PR failed to establish how the Controlled Medication Substances entered the Horse's system, it is not possible for the Tribunal to assess the PR's Fault or Negligence for the Rule violation. Therefore, the Tribunal is forced to take into account other, more objective factors in order to determine the period of Ineligibility.

- 7.7 In deciding the sanctions, the Tribunal considers the level of the Event in question and the fact that two Controlled Medication Substances and one of its metabolites had been detected in the Horse's sample. Further, the PR has not actively participated in the investigation, and has not provided any information on stable management, reasons for administration of the Controlled Medication Substances or anything else. The Tribunal therefore does not find any basis for reducing the sanction from that which it would otherwise impose.

## 8. Disqualification

- 8.1 For the reasons set forth above, the 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.

## 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 **eight (8) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **8 September 2013**.
  - 2) The PR is fined **CHF 1.000**.
  - 3) The PR shall contribute **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**



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**One member panel, Dr. Armand Leone**