



DECISION of the FEI TRIBUNAL

dated 10 November 2010

Positive Doping Case No.: 2010/02

Horse: KEDJARI DES SERRES

FEI Passport No: UAE 40155

Person Responsible: Mohd Ahmed Ali Al Subose

Event: CEI3* 160km Dubai, UAE

Prohibited Substance: Stanozolol

1. COMPOSITION OF PANEL

Mr Patrick A. Boelens
Mr Erik Elstad
Mr Philip O'Connor

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.

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 ("**GR**").

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

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"),

1st 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**"), 11th 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 Ahmed Ali Al Subose

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. KEDJARI DES SERRES (the "**Horse**") participated at the CEI3* 160km in Dubai, in the United Arab Emirates (UAE), on 16 January 2010 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Mohd Ahmed Ali Al Subose, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").
2. The Horse was selected for sampling on 16 January 2010.
3. Analysis of the blood sample no. FEI-5502012 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club ("**HKJC**"), by Mr. Colton Ho Fai Wong, Chemist, under the supervision of Mr. Terence See Ming Wan, Head of Racing Laboratory. The analysis revealed the presence of Stanozolol (Certificate of Analysis dated 26 January 2010).
4. The Prohibited Substance detected is Stanozolol. Stanozolol is an anabolic steroid which improves energy levels and increases muscle mass. 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 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 Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 1 March 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.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 1 March 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.
10. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

11. On 16 March 2010, Ms. Sue Sidebottom, Assistant to Mubarak Khalifa bin Shafya of Al Aasfa Stables ("the Stables") submitted statements by Khalifa bin Shafya, Trainer and Manager at the Stables, and Dr. Mario Castro Guglielmone, the veterinarian responsible for the Horse. In addition, a statement by the PR was provided along with the completed FEI Questionnaire.
12. In his statement dated 15 March 2010, the PR points out that his riding for the Stables in the discipline of endurance is limited to his competition days. He claims not having known about the presence of the Prohibited Substance in the Horse, and that in his view the trainer would probably not appreciate the use of Prohibited Substances in any sport. The PR further stated being aware of the Anti-Doping Rules.
13. In his statement of 15 March 2010, Khalifa bin Shafya explained that another horse in his care, Lienka, was also subject to an anti-doping procedure following the finding of Stanozolol in Lienka's sample. That furthermore, a vial containing Stanozolol had been found on the premises of the Stables, and that the Dubai Police had been requested to investigate the matter.

Khalifa bin Shafya expressed the opinion that the facts of the two cases, when taken together, would require one to reach the opinion that there had been wrongdoing in these cases.

14. Dr. Guglielmone, in his statement of 14 March 2010, explained that in light of the fact that the case at hand is the second case at the Stables in a short period of time involving Stanazolol, he believed that somebody administered the substance without his knowledge and approval. His opinion was based in part on the fact that Stanazolol is under strict control and not routinely distributed by the Stable's medicine supplier, Dubai Equine Hospital. He also stated that he had seven (7) years of experience working in his area of expertise and that he had never been involved in any doping case.
15. On 12 April 2010, the Stables submitted two reports by Dubai Police as a result of the investigation. According to the 22 March 2010 report, a vial was received by Dubai Police on that day containing Stanazolol. According to the Dubai Police report from the following day, 23 March 2010, a vial was received by Dubai Police on that day with the fingerprints of Mohd Shabbir Khan. In a statement of 26 March 2010, submitted together with the above-referenced investigation results, Khalifa bin Shafya took the view that based on the Dubai Police reports, Mohd Shabbir Khan appeared to have been involved in the positive test result of the Horse. Khalifa bin Shafya explained that the riders at the stable receive a bonus when the horse they ride competes successfully in a competition, which could have been a possible motive for Mohd Shabbir Khan to administer the Prohibited Substance. Khalifa bin Shafya represented that the bonus policy will be changed, and expressed his determination to ensure that the entire Stable staff fully understands the rules going forward. Khalifa bin Shafya concluded his statement by confirming that the PR only had contact with the Horse the morning before the competition.
16. The FEI responded to the supplemental explanations on 9 June 2010 by explaining that according to the Dubai Police reports, a vial was received by Dubai Police on 22 March 2010 containing Stanazolol. That another Dubai Police Report of the next day (23 March 2010) established that the finger-prints of Mohd Shabbir Khan were on that vial. The FEI concluded therefore that two different vials had been given to the police. That furthermore, the reports would not prove that Mohd Shabbir Khan had actually administered any Prohibited Substance 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 to the validity of the samples tested or to their discovery and that the bottle was described as being unsealed. The FEI therefore concluded that the PR had not established how the Prohibited Substance had entered the Horse's Sample.

17. On 9 July 2010, the Stables provided a statement by Mubarak bin Shafya in response to the FEI submission of 9 June 2010. 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.
18. On 17 August 2010, and based on the allegations brought forward of the involvement by Mohd Shabbir Khan in the administration of the Prohibited Substance, the PR requested the lifting of the Provisional Suspension.
19. By Preliminary Decision of 24 August 2010, the Tribunal decided to maintain the Provisional Suspension. The Tribunal argued that the case file was inconclusive on various elements of the case and that it was not established by the Dubai Police reports that Mohd Shabbir Khan had indeed been involved in the causing of the positive test result. The Tribunal also pointed out that it was not established that the PR bore no fault and/or no negligence for the rule violation.
20. By email of 26 October 2010, the UAE NF informed the FEI Legal Department that no further evidence would be submitted in the case at hand. The UAE NF highlighted the specific elements of the definition of the Person Responsible and that in the UAE in particular, stables usually host large numbers of horses, and that riders often compete with one horse on one weekend and a different horse on the following weekend.

4.5 Jurisdiction

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

4.6 The Person Responsible

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

4.7 The Decision

23. 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 FEI Tribunal is satisfied that the test results evidence the presence of Stanazolol, which is a Prohibited Substance, 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.

24. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substance found in the Sample is therefore classified as a "Doping" Prohibited Substance.
25. 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.
26. 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 Substance entered the Horse's system. The Tribunal finds that the evidence submitted in this case by the Stables in order to establish how the Prohibited Substance entered the Horse's body does not meet the burden of proof as described above. Specifically, the Tribunal finds that the PR not established, by a balance of probability, that Mohd Shabbir Khan is responsible for the presence of the Prohibited Substance in the Horse's system. The two reports from the Dubai Police establish only that a vial containing Stanazolol was found on the grounds of the Stables and that it, or potentially a second vial with Stanazolol, likely contained the fingerprints of Mohd Shabbir Khan. However, the reports do not unequivocally establish that the fingerprints found do indeed belong to Mohd Shabbir Khan or even that Mohd Shabbir Khan was involved at all in the administration of the substance to the Horse. The Tribunal notes in this context that Mohd Shabbir Khan himself has not submitted any declaration or statement 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, the Tribunal finds that it has not been established by the requisite standard of proof that Mohd Shabbir Khan caused, or contributed to causing, the presence of the Prohibited Substance in the Horse's system.
27. With regards to the question of fault and negligence, the Tribunal finds that the PR has failed to establish that he bears "No Fault" and "No Negligence" or "No Significant Fault" and "No Significant Negligence" for the rule violation in this case. In this context, the Tribunal recognizes that the PR himself only has contact with the horse he is going to ride on the day of the respective competition. That conclusively, for the remainder of the time, the management of the horses the PR competes with is in the hands of the stable of the respective horse, without any involvement of the PR. The Tribunal highlights that, notwithstanding the above, according to FEI Rules, the rider is and remains the Person Responsible for the horse, and that this concept applies equally across all FEI

disciplines, as well as to riders administered by any National Federation of the FEI. The Tribunal is furthermore concerned that the submissions provided by the Stables do not indicate any specific instructions or precautions taken to ensure compliance with the EADCM Rules or FEI General or Veterinary Regulations. The Tribunal is also 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. Moreover, that Al Aasfa Stables, despite the various anti-doping cases of horses stabled there, do not provide any information about measures being implemented in order to avoid the repeated breach of FEI Rules and Regulations.

28. According to Article 9 of the EADMCRs, Disqualification from the Event is automatic when a positive violation has been proven.
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 EADMCR.

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 months (twelve)** to be effective immediately and without further notice from the date of notification. The period of Provisional Suspension, effective from 1 March 2010 to 10 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 February 28, 2011.
 - 2) The PR is fined **CHF 2000.-**.
 - 3) The PR shall contribute **CHF 1000.-** 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 Patrick Boelens