



## **DECISION of the FEI TRIBUNAL**

**dated 22 July 2009**

**Positive Medication Case No.:** 2009/03

**Horse:** BEBABELOULA

**FEI Passport No:** FRA09672

**Person Responsible:** Sultan Ahmed bin Sulayem

**Event:** CEI 3\* 120km, Al Wathba, UAE

**Prohibited Substances:** Butorphanol, Hydroxyxylazine

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

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

### **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:** 11 July 2009: in person.

### **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, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

At the time of the Event General Regulations, 22<sup>nd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174; as of 1 January 2009: General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009, Arts. 118, 143.1

and 169 ("**GRs**").

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:** Sultan Ahmed bin Sulayem

**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. BEBABELOULA (the "**Horse**") participated at the CEI 3\* 120km in Al Wathba, United Arab Emirates, on 13 December 2008 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Sultan Ahmed bin Sulayem, who is the Person Responsible in accordance with Article 118 GRs (the "**PR**").
2. The Horse was selected for sampling on 13 December 2008.
3. Analysis of the urine sample no. FEI-0084386 taken from the Horse was performed by the FEI approved laboratory, Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), under the supervision of Mr. April Sum Yee Wong, Chemist, and Mr. Terence See Ming WAN, Head of Racing Laboratory. The urine analysis revealed the presence of Butorphanol and Hydroxyxylazine (Test Report no. 08-1370 dated 29 December 2008). Analysis of the blood sample no. FEI-0084386 was also performed by the HKJC, under the supervision of Mr. Wai Him KWOK, Chemist, and Mr. Terence See

Ming WAN, Head of Racing Laboratory. That analysis revealed the presence of Butorphanol (Test Report no. 08-1369 dated 29 December 2008).

4. Therefore, the Prohibited Substances detected are Butorphanol and Hydroxyxylazine. Butorphanol is an opioid analgesic with pain killer and sedative effects when combined with certain other substances. Hydroxyxylazine, a metabolite of Xylazine, is a sedative with analgesic and muscle relaxant effects. These two substances, when present together in a Horse's body, are classified as "Prohibited Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "Doping".
5. No request was previously made to administer Butorphanol or Hydroxyxylazine to the Horse, and no medication form had been submitted for any of these substances.

#### **4.2 The Preliminary Hearing**

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences involved, were duly notified to the PR on 11 February 2009.
7. The notification of 11 February 2009 included notice that the Person Responsible was provisionally suspended and granted the Person Responsible the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR confirmed that he wished to be heard at a Preliminary Hearing. Therefore, the Preliminary Hearing took place on 16 February 2009. During the course of the Hearing, the PR explained that the Horse was taken care of by the Trainer and the Veterinarian at Dubai World Stables, a well established stable with excellent veterinary facilities. Therefore, the PR believed he was entitled to rely on the employees of Dubai World Stables to present him with a Horse that was "fit" to ride.
9. Concerning the presence of the Prohibited Substances, the PR stated at the time of the Preliminary Hearing that he had no explanation as to how the Prohibited Substances could have entered into the Horse's system.
10. The preliminary decision was rendered and communicated to the PR on 24 February 2009. The PR was informed that the Preliminary Panel had decided to maintain the provisional suspension until the final decision of the case by the FEI Tribunal or until the production of a negative B-Sample.
11. In its preliminary decision, the Preliminary Panel stated that the substances found in the Horse's urine and blood, Butorphanol and Hydroxyxylazine, are Prohibited Substances according to the

Veterinary Regulations, Annex II (former, identical version entitled "Annex III").

12. The Preliminary Panel stressed that it is FEI policy to impose a Provisional Suspension following a positive A-Sample where *Doping Prohibited Substances* are confirmed following the laboratory analysis.
13. In light of the above, and considering that the FEI policy is to impose Provisional Suspension in doping cases, the Preliminary Panel maintained the Provisional Suspension.

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

14. Together with the Notification Letter of 11 February 2009, the PR also received notice that the B-Sample analysis would, upon request by the PR, be performed. The PR was informed of his right to attend or be represented at the identification and opening of the B-Sample.
15. Through email by his counsel Ms Lynda Zaccak and Mr. Jeremy Key, the PR confirmed on 20 February 2009 that he wished for the B-Sample Analysis to be performed. The PR specifically requested that the B-Sample Analysis be carried out at the FEI accredited laboratory in Paris, the Laboratoire des Courses Hippiques "L.C.H". The same request was repeated on 22 February 2009 by Hallvard Sommerseth, Head of Veterinary Department of the UAE Equestrian & Racing Federation.
16. By email of 20 February 2009, the FEI informed the PR that according to current FEI policy, the B-Sample analysis would be performed in the same laboratory as the A-Sample analysis. And that accordingly, the B-Sample analysis would take place at the HKJC. The FEI reiterated and further explained this policy in its fax to the PR dated 26 February 2009. It was concluded, that, in the absence of any specific reason to reconsider the question of where the B-Sample laboratory analysis should be performed, and for reasons of equal treatment of all such cases, the original denial of the request to have the B sample performed at L.C.H. would stand.
17. The B-Sample Analysis was performed on urine on 27 February 2009 at the HKJC by Chemist Nola Hua YU, under the supervision of Mr. David Kwan Kon LEUNG, Racing Chemist. The B-Sample Analysis on blood was carried out on the same date at the HKJC under the supervision of Dr. Colton Ho Fai WONG and Mr. David Kwan Kon LEUNG, Racing Chemist.
18. The PR chose not to attend nor did he send a representative to the HKJC. Accordingly, Mr. Jacky Tsang, Assistant Security Operations Manager at the HKJC, witnessed the opening of both B-Samples.

19. In his witness statements, Mr. Jacky Tsang certified that the "B" Urine Sample container/the "B" Blood Sample container *"shows no signs of tampering"* and *"that the identifying number appearing on the sample to be tested by the Racing Laboratory of the Hong Kong Jockey Club corresponds to that appearing on the collection documentation accompany the sample"* (Witness Statements dated 27 February 2009).
20. The B-Sample Analysis of the urine confirmed the presence of Butorphanol and Hydroxyxylazine (Test Report dated 5 March 2009). The B-Sample Analysis of the blood confirmed the presence of Butorphanol (Test Report dated 5 March 2009).
21. The results of the B-Sample Analysis were notified to the PR on 16 March 2009 through the United Arab Emirates Equestrian & Racing Federation.

#### **4.4 The further proceedings**

22. After receiving two extensions of time to submit his explanations, the PR, on 15 April 2009, submitted his written explanations to the FEI. In his submission, the PR claims that the notification of the positive A sample was untimely and therefore in breach of Article 7.1.3 EADMCR.
23. Together with its explanations, the PR also submitted two documents concerning the medical treatment of the Horse: on the one hand, a Veterinarian Statement by Dr. Massimo Puccetti of the Dubai Equine Hospital dated 14 April 2009, including a "Horse History" listing the medications received by the Horse between 6 October 2008 and 29 January 2009 ("Horse History"). On the other hand, a document entitled "Patient History" ("Patient History").
24. The explanations of 15 April 2009 included a statement by the PR dated 14 April 2009 as well as a statement of the Trainer, Mr. Mohammed Saif, Trainer and Stable Manager for the Dubai World Stables, dated 11 April 2009 (WS Mr Saif dated 11 April 2009). In a nutshell, the PR submits that the Horse had been recommended to him a couple of days before the race by Mr. Saif, and that he had first seen the Horse on the day of the race at about 5am. The PR further states not having had any knowledge of the presence of the Prohibited Substances in the Horse and that, if he had had such knowledge, he would not have ridden the Horse. Mr. Saif, by his statement, reports several incidents where the groom of the Horse, Mr. Bheru Singh, was observed in the stables after working hours. Further, that following those incidents, the groom had been dismissed by the stables and sent back to India. Mr. Saif also states that Mr. Singh admitted administering the medication.
25. The FEI responded to the PR's submission by its own submission dated 19 May 2009. With its submission, the FEI justified the

timeframe for administrative handling of the case file and demonstrated that the notification was done 'promptly' according to Article 7.1.3 EADMCR. The FEI also explained that the fact that the B sample was examined in the same laboratory as the A sample is not only FEI policy but is also consistent with the rules as laid down in the WADA Code and its annexes.

26. The FEI's submission further included a Veterinary Statement by Dr. Andrew Higgins, BVetMed MSc PhD FIBioI MRCVS and Member of the FEI Veterinary Committee, dated 2 May 2009. With respect to the two Prohibited Substances found in the Horse's samples, the Veterinary Statement explains that Xylazine may be given by intravenous or intramuscular route, and that Butorphanol is usually given by intravenous injection to horses (para 5 and 6 of the Veterinary Statement dated 2 May 2009). Dr. Higgins further stated that it would seem unlikely that a groom would have the knowledge or capability to co-administer Xylazine and Butorphanol at accurate doses and by the appropriate route (para 8 of the Veterinary Statement dated 2 May 2009).
27. The PR, on 6 June 2009, submitted his reply to the FEI's submission of 19 May 2009. With its submission the PR repeated the arguments as provided in his earlier submission and no new elements were put forward.
28. In addition, on 30 June 2009, the PR submitted his responses to the FEI Questionnaire.
29. Four days before the Final Tribunal Hearing date, on 7 July 2009, the PR submitted a statement by Mr. Yousef Moearakiroor, Assistant Trainer and Rider at Dubai World Stables, dated 7 July 2009 (WS Mr. Moearakiroor dated 7 July 2009). In this statement, Mr. Yousef testifies that he did not administer the Prohibited Substances. Further, he explains that he spoke with Mr. Singh, the former groom, who also denied having injected the Horse with the Prohibited Substances. Mr. Moearakiroor further claimed that Mr. Singh told him that he had seen the Veterinarian, Dr. Puccetti, inject the substances into the Horse the day before the Event.
30. On 8 July 2009, just three days before the hearing, the PR submitted a second statement by Mr. Saif dated 8 July 2009 (WS Mr. Saif dated 8 July 2009). In this new statement, which was only four paragraphs long, Mr. Saif contradicted his earlier statement and contended that he had in fact administered the two substances, Butorphanol and Hydroxylazine to the Horse orally on the morning of the ride in Abu Dhabi because he thought "that the substances would not make the horse tired so it can ride better". Mr. Saif also stated that he was "not asked to do this by the Person Responsible, or anybody else".
31. In the course of the Final Hearing, both the PR as well as the FEI

had the opportunity to present their arguments and positions. The PR argued that he should be allowed to rely on his support personnel, in particular considering that he was a very busy business man. He further argued that he had explained how the Prohibited Substances had entered into the Horse's system, and that he was not at fault in this respect. The PR admitted that he would have to reconsider how he approaches his stable management going forward.

32. On questioning by the FEI, the PR testified during the hearing that he was unaware of the qualifications of those working in the stable, in particular of the qualifications of the Trainer, to whom he entrusted the Horse. The PR further testified that he was presented with the Horse by the Trainer, which stands in contradiction to his statement dated 14 April 2009, where the PR explained that he was presented with the Horse by the Trainer's administrative assistant (see WS PR dated 14 April 2009, para. 13). Later on, the PR confirmed that it was the administrative assistant who transferred the Horse to him and who confirmed it was "fit to ride."

33. The FEI, during the Final Hearing, highlighted that the statements submitted by the PR in the course of the procedure were contradictory, and that the PR had failed to establish how the Prohibited Substances entered the Horse's body. The FEI, supported by Dr. Andrew Higgins by conference call, highlighted that the Prohibited Substances in question, Xylazine and Butorphanol, were only available for use in Horses in injectable form and that it was highly unlikely that the Substances would be administered orally. Further, that it would even be more unlikely that a groom or trainer, without medical qualifications, would be in a position to properly administer the Substances.

#### **4.5 Jurisdiction**

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

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

35. 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**

36. 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 Xylazine and Butorphanol, 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

finding.

37. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EADMCR. The Prohibited Substances, when present together in a sample, are classified as "Doping" Prohibited Substances.
38. In Doping and Medication cases, there is strict liability as described in Article 2.1.1 EADMCR. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 EADMCR, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 EADMCR.
39. The Tribunal is of the opinion that the PR has not been prejudiced by the fact that it took some time for the FEI to gather all the necessary information in this case, thereby making sure that the notification was handled with respect for the PR's rights. Moreover, when considering all the circumstances in relation to the handling of the case, the notification was prompt according to Article 7.1.3 EADMCR.
40. The Tribunal is also of the opinion that the fact that both the A-sample and the B-sample were analyzed in the same laboratory does not have any impact on the fairness of the handling of this case. The Tribunal accepts the FEI's argument on this point as set forth in 4.3., paragraph 16 above.
41. The PR is to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system, which was undoubtedly not what happened in the present case.
42. The Tribunal is somewhat concerned about the fact that the PR, during the final hearing, declared that the hiring of staff members at the stables was handled through the HR department of the company of which the PR is the chairman. This does not guarantee that the employees at the stables are sufficiently qualified for their specific tasks in relation to the handling of horses.
43. The Tribunal is also not satisfied with the fact that the hiring of staff at the PR's stables was monitored through the HR department of the company of which he was the chairman because this clearly does not guarantee or prove that appropriate written or other instructions were provided to the staff regarding the administration of Prohibited Substances to the Horses for medical treatment.
44. The Tribunal is also wondering why the PR did not submit any evidence regarding whether those who are employed at the stables receive strict written instructions that no Prohibited Substances are to be administered to any of the Horses.



45. Nevertheless the Tribunal appreciates that the PR has cooperated in these proceedings and endeavoured to provide an explanation for the presence of the Prohibited Substances by conducting a thorough investigation, even though it took some time.
46. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all substances administered to horses which are destined for participation in international events and to ensure that such Horses do not have any Prohibited Substances in their systems. The competitors are also responsible for how their staff treat the horses and administer treatment to them.
47. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible. The Tribunal understands that a busy businessman will have less time to follow up his responsibilities in this respect, but even so that does not render Articles 10.5.1 or 10.5.2 EADMCR applicable in this case. The strict responsibility of the PR is necessary in the fight against doping and to protect the principles of fair play, equality and promotion of equal and fair conditions in the conduct of international events.
48. According to Article 9 EADMCR, disqualification from the event is automatic when there is a positive finding.
49. 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.
50. The Tribunal has studied the "Horse History" and "Patient History" discussed during the Hearing and reviewed it with Dr. Andrew Higgins while he was available on the telephone as a witness for the FEI. During the same Hearing, the PR indicated that when the Horse joined his stables some two years ago, it had a 'joint' problem that had been treated. The documentation provided by the PR clearly indicates that the Horse still has a problem and needs multiple treatments demonstrating that the 'joint' problem persists as some injections with MAP5, an oily substance, were administered. This raises the question whether the Horse is still fit to compete at a high level. The Tribunal is of the opinion that the Horse, at the age of 15 years, is no longer able to participate in long Endurance competitions as it needs rather intensive treatment in preparation for a race and after having finished the competition. Accordingly, and based on Article 161.2 (v) GRs, the Tribunal has decided to suspend the Horse for twelve (12) months.

#### **4.8 Disqualification**

51. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR 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**

52. 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 **6 months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of Ineligibility imposed in this decision.
- 2) The Horse is suspended for a period of **12 months** to commence immediately and without further notice from the date of the notification.
- 3) The PR is fined **CHF 3000.-**.
- 4) The PR shall contribute **CHF 1500-** towards the legal costs of the judicial procedure.
- 5) The PR shall cover the costs of the Confirmatory analysis request in the amount of **CHF 750,-**.

#### **5. DECISION TO BE FORWARDED TO:**

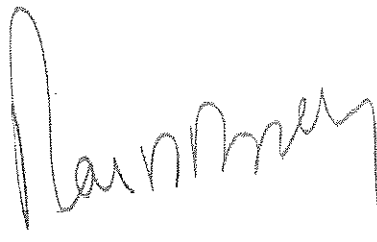
**5.1 The person sanctioned:** Yes

**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**



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**THE CHAIRMAN Mr Patrick A. Boelens**