



DECISION of the FEI TRIBUNAL

dated 17 December 2010

Positive Doping Case No.: 2010/03

Horse: SAPHIRE DE SINUHE

FEI Passport No: UAE02274

Owner: HH Prince Abdullah Bin Fahd Bin Abdullah

Person Responsible: Abdullah Bahaian / KSA

Event: CEI2* 120km, Riyadh, Saudi Arabia

Prohibited Substance: Betamethasone

1. COMPOSITION OF PANEL

Mr. Erik Elstad
Mr. Philip O'Connor
Mr. Pierre Ketterer

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, as well as evidence and testimony presented at the oral hearing.

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.

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: Abdullah Bahaian

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. SAPHIRE DE SINUHE (the "**Horse**") participated at the CEI2* 120km, Riyadh, Saudi Arabia, on 24 January 2010 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Abdullah Bahaian, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 24 January 2010.
3. Analysis of the blood sample no. FEI-0115867 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Wai Him KWOK, Chemist, under the supervision of Terence See Ming WAN, Chief Racing Chemist (Head of Racing Laboratory). The analyses revealed the presence of Betamethasone (Test Report dated 4 February 2010).

4. The Prohibited Substance detected is Betamethasone. Betamethasone is a corticosteroid with anti-inflammatory properties. Betamethasone is classified as a *Medication A Prohibited Substance*. Therefore, the rule violation in this case is a *Medication Control* rule violation.
5. No request was made to administer Betamethasone to the Horse, and no medication form was submitted for this substance.

4.2 The Proceedings

6. The Horse, SAPHIRE DE SINUHE, ridden by the PR Abdullah Bahaian, participated at the CEI1* 100 km in Altayef – Al Massarah Endurance Village (KSA) on 10 December 2009. The Horse was tested and the Prohibited Substance Diclofenac was found to be present in the Horse's sample. Diclofenac is classified as a Medication A Prohibited Substance. An Anti-doping and Controlled Medication Rule case was opened against the PR, (Case 2010/FT01- SAPHIRE DE SINUHE), and the PR accepted the administrative sanction offered to him. Therefore, the case was decided administratively on 11 February 2010.
7. The same horse and rider competed at the CEI2* 120 km in Riyadh – Al Faisaliyah Endurance Village (KSA) on 31 December 2009. The Horse was once again tested and the analysis showed the presence of the same Prohibited Substance, Diclofenac. A new Anti-Doping and Controlled Medication Rule case was opened against the PR (Case 2010/FT04 – SAPHIRE DE SINUHE), and a Notification Letter was sent to the PR by the FEI on 11 February 2010. Also in this case, the PR accepted the administrative sanction offered to him.
8. In the present case, 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. In light of the two earlier Anti-Doping and Controlled Medication Rule cases involving the PR and the Horse combination (2010/FT01 and 2010/FT04), this new violation was not eligible for the administrative procedure even though it involves a Medication A Prohibited Substance and not a Doping Prohibited Substance insofar as such procedure is limited to first time violations.
9. 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.
10. Furthermore, the owner of the Horse, HH Prince Abdullah Bin Fahd Bin Abdullah, was officially notified of the presence of the

Prohibited Substance by Notification Letter dated 1 March 2010. He was also informed that following the positive test result, an Anti-Doping and Controlled Medication Rule violation case had been opened against the PR on the same day, and that in light of the two earlier Anti-Doping and Controlled Medication Rule cases involving the Horse (2010/FT01 – SAPHIRE DE SINUHE; 2010/FT04 – SAPHIRE DE SINUHE), the Horse was provisionally suspended. HH Prince Abdullah Bin Fahd Bin Abdullah was also granted the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.

11. By email of 2 March 2010, the KSA NF informed the FEI on behalf of HH Prince Abdullah Bin Fahd Bin Abdullah that the latter would not participate in a Preliminary Hearing. Further, that in the opinion of HH Prince Abdullah Bin Fahd Bin Abdullah, the PR and the trainer of the Horse would be the responsible persons for the Horse.
12. A Preliminary Hearing took place on 4 March 2010 by conference call. Prior to the Preliminary Hearing, the PR submitted explanations with regard to his three (3) anti-doping cases of 2010, details of which will be addressed below, to the extent required.
13. During the Preliminary Hearing, the PR explained that five (5) days prior to the Event, the Horse was not in its best shape and that he had therefore contacted his veterinarian, Dr. Qassim Ahmad Habous. He explained that Dr. Habous examined the Horse, and had found some problems in its back. Dr. Habous himself testified during the Preliminary Hearing that he had applied some "infiltration" (i.e. injection) to the Horse, and had used two (2) ampoules, both containing 14 mg of Betamethasone and B-Block. Dr. Habous further stated that following some experiments with the Horse using the same infiltration, he had assumed that the Betamethasone would be out of the Horse's body after five days. Dr. Habous also stated that following the Notification Letter of 1 March 2010, he had done some further research and had found out that Betamethasone might remain in a horse's body for up to seven (7) days. With regard to the cases 2010/FT01 – SAPHIRE DE SINUHE and 2010/FT04 – SAPHIRE DE SINUHE, both involving Diclofenac, classified as a Medication A Prohibited Substance, the PR contended that a brochure provided by the KSA NF to its riders, trainers and owners about Prohibited Substances did not list Diclofenac as a Prohibited Substance. That he had therefore been using Diclofenac containing medication in good faith, and that at the time the Horse was tested a second time, he had not yet been notified of the first case. The FEI pointed out that the PR had already accepted the administrative sanctions offered to him in the first case, 2010/FT01 – SAPHIRE DE SINUHE, and that therefore, that case was already closed. The FEI further requested the maintenance of the Provisional

Suspension, arguing that the case in question was the PR's third Anti-Doping and Medication Control case in 2010 with the same Horse.

14. Following the Preliminary Hearing, the PR submitted a statement by Dr. Habous in which the latter summarized the explanations he had provided during the Preliminary Hearing about the treatment. Dr. Habous further explained that he had been called by the owner of the Horse "Mr. Abd Allah owner of Zafeir" prior to the Event, and that, after a long discussion, "Mr. Abd Allah" had approved the above treatment. Lastly, Dr. Habous noted that he was aware of race horse samples with the same dosage of Betamethasone as applied in the case at hand that had tested negative test at the Dubai Laboratory.
15. By means of a Preliminary Decision dated 10 March 2010, the Provisional Suspension was maintained by the Preliminary Hearing panel.

4.3 The B-Sample Analysis

16. Together with the Notification Letters of 1 March 2010, the PR as well as HH Prince Abdullah Bin Fahd Bin Abdullah also received notice that they were entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The two individuals were also informed of their right to attend or be represented at the identification and opening of the B-Sample.
17. Both the PR and HH Prince Abdullah Bin Fahd Bin Abdullah declined to exercise their right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

18. On 5 March 2010, the PR accepted the administrative sanctions offered to him in the context of the second case, 2010/FT04 - SAPHIRE DE SINUHE, by formal Acceptance Letter.
19. On 2 July 2010, the FEI submitted a statement by Dr. Graeme Cooke, Director of Veterinary Department. In his statement, Dr. Cooke explained that the treatment administered by Dr. Habous "is likely to have caused the positive test result" of the Horse at the Event in question. In response to Dr. Habous' statement, Dr. Cooke explained that the Dubai Laboratory is not an FEI accredited laboratory, and that as a result, it does not follow the same standards, rules and regulations as FEI accredited laboratories. Dr. Cooke concluded that the test results of the Dubai Laboratory therefore did not present a basis for comparison with FEI test results. Lastly, Dr. Cooke highlighted that

withdrawal times of veterinary treatments are different in every horse, depending amongst others on the horse's height and weight, its age, state of health etc.

20. On 11 October 2010, following request by the FEI for clarification, Dr. Habous submitted a second statement. In this statement, Dr. Habous explained that it had been the PR, and not the owner of the Horse, who had called him prior to the Event, and that it was also the PR who had approved the treatment as suggested by him.
21. HH Prince Abdullah Bin Fahd Bin Abdullah did not intervene at all in the course of the procedure, and did not submit any explanations or evidence within the given deadlines.

4.5 Jurisdiction

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

4.6 The Person Responsible

23. 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

24. 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 Betamethasone, which is a Prohibited Substance, in the sample taken from the Horse at the Event. Neither the PR, nor HH Prince Abdullah Bin Fahd Bin Abdullah, contested the accuracy of the test results or the positive findings.
25. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substance detected in the sample is classified as a "Medication A" Prohibited Substance.
26. 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.

27. 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. In this context, the Tribunal considers the explanations by the PR and Dr. Habous about the treatment of the Horse. The Tribunal further takes note of the statement by Dr. Cooke, confirming that the treatment as described by the PR and his veterinarian are likely to have caused the positive test result. The Tribunal therefore finds that the PR has established, by a balance of probabilities, how the Prohibited Substance entered the Horse's system.
28. With regards to the question of fault or negligence for the rule violation, the Tribunal finds that the PR cannot absolve himself of fault under the circumstances. First, the Tribunal has repeatedly expressed the view that it is the responsibility of competitors to not only inform themselves of all substances administered to horses which are destined for participation in international events, but to also ensure that such horses do not have any Prohibited Substances in their systems. Competitors are also responsible for how their staff care for the horses and administer medical treatment to them, which extends to veterinarians.
29. Second, with regards to the specific reliance on Dr. Habous and his advice, the Tribunal finds that this reliance was misplaced. First, the Tribunal takes note that the PR's veterinarian had based his withdrawal calculation upon experiments run by a non FEI accredited laboratory, and had therefore applied imprecise comparative data. The Tribunal is further surprised that Dr. Habous had to substantially revise his information after the positive test result, and that he had not recommended a more conservative and safer margin to the PR to protect against the risk of violating the anti-doping rules. For those reasons, the Tribunal finds that the PR was negligent in relying on the advice of Dr. Habous.
30. With respect to the two earlier anti-doping cases of 2010 involving the PR and the Horse, the Tribunal understands that the first case, 2010/FT01 - SAPHIRE DE SINUHE, was already closed at the time of the Preliminary Hearing. The Tribunal further acknowledges that in the course of the present procedure, the PR had accepted the administrative sanctions offered to him in the context of the second case, 2010/FT04 - SAPHIRE DE SINUHE. The Tribunal therefore does not decide the two earlier cases, but must take them into consideration as meaningful aggravating circumstances when deciding the present case since they involve the same PR. The PR himself explained in a letter (page 57 of the case file) that he is a professional rider for the Saudi Equestrian Federation. The case at hand is the third case of the PR and the Horse combination

in 2010. The PR has acted negligently in all three cases regarding his responsibility to ensure that the horse did not compete with Prohibited Substances in its system – see paragraph 26 above.

31. Also in deciding the sanctions, the Tribunal finds the following factors to be mitigating: (1) the PR's decision to quickly accept responsibility and acknowledge the violation; (2) the explanation regarding how the substance entered the Horse's system; (3) the cooperation provided by the PR during the investigation and (4) that all three cases involved Medication A Prohibited Substances and not Doping Prohibited Substances.
32. With respect to the Provisional Suspension of the Horse, the Tribunal takes note that the FEI has formally informed the owner of the Horse of the Provisional Suspension and has granted him the right to be heard in this case. The Tribunal is alarmed by the fact that the Horse competed three times in 2010 during which times he was apparently in need of medical treatment. It is therefore of the opinion that the Provisional Suspension was adequate in order to preserve and protect the Horse's welfare, and that the FEI has rightfully imposed the Provisional Suspension in accordance with Article 7.2 of the EADMCRs. In light of the above, the Tribunal relies on the authority provided to it pursuant to Article 161.2 (v) of the GRs to suspend the Horse for the period of time as detailed below.
33. According to Article 9 of the EADMCRs, disqualification from the Event is automatic when a positive violation has been proven.
34. 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

35. 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

36. The FEI Tribunal has decided to impose the following sanctions on the PR and the Horse, 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 2 March 2010 to 17 December 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 1 March 2011.

- 2) The Horse 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 2 March 2010 to 17 December 2010, shall be credited against the Period of Suspension imposed in this decision. Therefore, the Horse shall be ineligible to participate in FEI activities through 1 March 2011.
- 3) The PR is fined **CHF 1,000.-**.
- 4) The PR shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

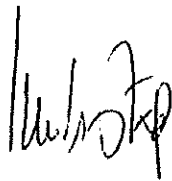
5.1 The person sanctioned: Yes

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: HH Prince Abdullah Bin Fahd Bin Abdullah

FOR THE PANEL



THE CHAIRMAN Erik Elstad