



## **DECISION of the FEI TRIBUNAL**

**dated 5 November 2009**

**Positive Medication Case No.:** 2009/04

**Horse:** AL FARAA

**FEI Passport No:** KSA 00109

**Person Responsible:** Ali AlHashem

**Event:** CEI 2\* 120km, Al Khalediah Farm, Tebrak, Riyadh, KSA

**Prohibited Substances:** 4-Aminophenazone, 4-Methylaminophenazone, Mepivacaine

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

Prof. Dr. Jens Adolphsen  
Mr Pierre Ketterer  
Mr Alberto 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: by correspondence.

### **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.

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:** Ali AlHashem

### **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. AL FARAA (the "**Horse**") participated at the CEI2\* 120km in Al Khalediah Farm, Tebrak, Riyadh, KSA, on 27 January 2009 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Ali AlHashem, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 27 January 2009.
3. Analysis of the blood sample no. FEI-0092680 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), by Mr. Wai Him Kwok, Chemist, under the supervision of Mr. Terence See Ming WAN, Head of Racing Laboratory. The analysis revealed the presence of 4-Aminophenazone, 4-Methylaminophenazone and Mepivacaine (Test Report no 09-0179 dated 13 February 2009)
4. The Prohibited Substances detected are 4-Aminophenazone, 4-Methylaminophenazone and Mepivacaine. 4-Aminophenazone and 4-Methylaminophenazone are metabolites of Aminophenazone and have an anti-inflammatory and analgesic effect, while Mepivacaine is

a local anaesthetic. Aminophenazone and Mepivacaine, 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 had been made to administer 4-Aminophenazone, 4-Methylaminophenazone or Mepivacaine to the Horse, and no medication form had been submitted for any of these substances.

#### **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 25 February 2009. On 2 March 2009, the Saudi Arabian Equestrian Federation (KSA NF) informed the FEI that the Notification Letter referred to an incorrect location and date for the Event. Accordingly, on 3 March 2009, the FEI notified the PR by means of a corrected version of the 25 February 2009 Notification Letter.
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. On 3 March 2009, the KSA NF informed the FEI Legal Department that the PR wished to participate in the preliminary hearing scheduled for 4 March 2009.
9. Despite two attempts by the designated Preliminary Hearing panel, Mr. Erik Elstad, and the FEI Legal Department, to hold the Preliminary Hearing with the PR, the PR did not dial in at the scheduled time for the previously-arranged Preliminary Hearing dates. The KSA NF, on 4 March 2009, was informed accordingly, and the FEI also suggested to the KSA NF that the PR might require some assistance with the English language in order to participate.
10. Despite the FEI's efforts, no Preliminary Hearing took place.

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

11. Together with the Notification Letter, the PR also received notice that he was entitled to the performance of 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.
12. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

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

13. On 8 March 2009 as well as on 11 March 2009, the PR submitted two unsigned statements, both entitled "The name of God the Merciful". Both statements, while written in English language, are not coherent and do not contain full sentences. Both statements list however the following substances as having been administered to the Horse: Biodyl inj; Cre-o-pan inj; Hemo-15 inj; Catosal inj; Methonine (*sic*) inj; Saracin (*sic*) inj.
14. On 12 March 2009, the FEI Legal Department wrote to the KSA NF and informed them about the receipt of the deficient statements from the PR. The FEI Legal Department proposed again that the KSA NF, as the PR's National Federation, assist the PR in the proceedings.
15. On 23 March 2009 and 31 March 2009, reminders were sent to the KSA NF inquiring why no response had been received to the FEI communication of 12 March 2009.
16. On 7 April 2009, the KSA NF, on behalf of the PR, submitted a statement informing the FEI that a meeting had taken place of the KSA NF and the PR. The KSA NF explained, in a nutshell, that, two days prior to the Event, the PR had been asked by the trainer, Hashem Alhashem, a local trainer not registered with the FEI, to ride the Horse. That the trainer had administered the Prohibited Substances, and that the PR did not have any knowledge of such administration. That the PR had admitted that he should have informed himself of the medications and treatments received by the Horse prior to the competition. Further, that during a meeting with the KSA NF, the trainer had explained that he did not know that the substances administered by him were Doping Prohibited Substances and that the PR, as well as the trainer, were unfamiliar with the EADMCRs. The KSA NF concluded by explaining that the PR's level of English was insufficient to competently express himself in the FEI proceedings.
17. In his Veterinary Statement dated 18 April 2009, Dr. Andrew Higgins, BVetMed MSc PhD FIBiol MRCVS, Member of the FEI Veterinary Commission, explained that the substances that the PR claimed were administered to the Horse could not have caused the positive test result. Further, that 4-Aminophenazone and 4-Methylaminophenazone are metabolites of the non-steroidal anti-inflammatory drug (NSAID) Metamizole, and that Metamizole as well as Mepivacaine are substances included in the FEI "Medicine Box", which provides accurate detection times.
18. By email of 25 May 2009, the KSA NF informed the FEI that the PR would not provide a response to the Veterinary Statement and that the case could be transmitted to the FEI Tribunal.

#### **4.5 Jurisdiction**

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

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

20. 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**

21. 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 FEI Tribunal is satisfied that the test results evidence the presence of 4-Aminophenazone, 4-Methylaminophenazone and Mepivacaine, 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.
22. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EADMCR. The Prohibited Substances found in the sample are classified as "Doping" Prohibited Substances.
23. 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.
24. The Tribunal is willing to accept the explanation that the Prohibited Substances were administered by the trainer, without knowledge of the PR, and is therefore of the opinion that the PR has explained the reason for presence of the Prohibited Substances in the Horse's system. However, the PR remains entirely personally responsible for the presence of the Prohibited Substances in his Horse's sample, according to the strict liability principle incorporated within the EADMC Rules.
25. The PR in every case has an absolute responsibility to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system. The PR has obviously failed to do so: he stated that he was not at all familiar with the FEI Rules."
26. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all relevant rules to compete in FEI events and of 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.

27. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible.
28. According to Article 9 EADMCR, disqualification from the Events is automatic when there is a positive finding.
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 the PR from the Events and all medals, points and prize money won at the Events 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** to be effective 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 PR is fined **CHF 1500.-**.
  - 3) The PR shall contribute **CHF 1500.-** towards the legal costs of the judicial procedure.

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

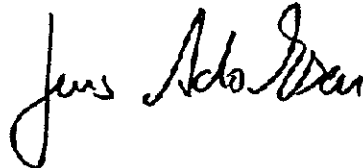
**5.1 The persons sanctioned:** Yes

**5.2 The President of the NF of the persons sanctioned:** Yes

**5.3 The President of the Organising Committee of the events through his NF:** Yes

**5.4 Any other:** No

**FOR THE PANEL**

A handwritten signature in black ink, reading "Jens Adolphsen". The signature is written in a cursive style with a large initial 'J'.

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**THE CHAIRMAN Prof. Dr. Jens Adolphsen**