



DECISION of the FEI TRIBUNAL

dated 4 August 2011

Positive Anti-Doping Case No.: 2011/BS04

Horse: OXILLILIA JOELLE

FEI Passport No: NED 42237

Person Responsible: Omran Ahmed Al Owais / UAE

Event: CSI4*-W, Abu Dhabi, UAE

Prohibited Substance: Reserpine (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Pierre Ketterer, Chair
Mr. Patrick Boelens, member
Mr. Ken Lalo, member

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

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, updates effective 1 January 2011 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1 and 169 ("**GRs**").

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

updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, updates effective 1 January 2011, 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: Omran Ahmed Al Owais

3.3 Justification for sanction:

GRs 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."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

4. DECISION

4.1 Factual Background

1. OXILLILIA JOELLE (the "**Horse**") participated at the CSI4*-W, in Abu Dhabi (UAE), on 13 January 2011 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Omran Ahmed Al Owais, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 13 January 2011.
3. Analysis of the blood sample no. FEI-5505174 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club, Racing Laboratory ("**HKJC**"), in Hong Kong (China), by Mr. Nola Hua YU, Chemist, under the supervision of Mr. Terence See Min WANG, Chief Racing Chemist, Head of

Racing Laboratory. The analysis of the blood sample revealed the presence of Reserpine (Test Report n° 11-0123 dated 28 January 2011).

4. The Prohibited Substance detected is Reserpine. Reserpine is a behavioral modifier used as a long lasting tranquilliser and is categorised by the FEI as a *Banned Substance*. Therefore, the finding of Reserpine in the Horse's sample constitutes an *Anti-Doping* rule violation.

4.2 The Proceedings

5. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 21 February 2011. 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.
6. A Preliminary Hearing took place on 23 February 2011. Prior to the Preliminary Hearing, the PR submitted a statement in which he explained that he had been competing in international and national events since 1988. That, on 12 January 2011, the day prior to the Competition, he had encountered difficulties in loading the Horse onto the transport to the Competition. That therefore, following the recommendation by his local veterinarian, he had purchased some Rakelin at a nearby animal pharmacy, and had administered 3 ml of Rakelin to the Horse in order to sedate it. That he was not sure whether the product given contained any Prohibited Substances. That, upon arrival at the Competition, he had handed a written declaration to the organiser of the Event about the administration of the Rakelin, asking whether the Horse was eligible to compete despite the administration of the Rakelin. That the organiser did not revert to him on his question, and that - in the absence of a response - he had competed.
7. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

4.3 The B-Sample Analysis

8. Together with the Notification Letter of 23 February 2011, 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 B-Sample analysis, and to request that the B-Sample be analysed in a different Laboratory than the A-Sample.
9. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

10. On 24 February 2011, the PR, through the United Arab Emirates Equestrian and Racing Federation ("UAE"), submitted some information about Rakelin, downloaded from the internet. The PR further submitted a declaration by the Organising Committee of the Event. In that letter the Organising Committee confirmed having received by the PR, on the day prior to the Competition, a "declaration of horse medication". The PR further explained that upon question, the Organising Committee had orally stated that it had been too busy during the Event to forward the declaration to the concerned body.
11. On 3 May 2011, the PR requested the lifting of the Provisional Suspension. Except for timing and Competition planning considerations, the PR did not present any new arguments in support of his request to lift the suspension.
12. On 13 May 2011, the FEI replied in writing to the PR's request to lift the Provisional Suspension. The FEI argued that the prerequisites under EAD Rules Article 7.4.1(b) for imposing the Provisional Suspension had been satisfied at the time of the imposition of the Provisional Suspension. That the PR's request to lift the Provisional Suspension had to be interpreted as a petition for a second Preliminary Hearing as provided for under EAD Rules Article 7.4.3. Therefore, in order to argue for a lifting of the Provisional Suspension, the PR had to demonstrate either that: (i) new evidence existed that, if known at the time of the Preliminary Hearing, may have lead to the lifting of the Provisional Suspension; or that (ii) there was a likelihood of success on the merits and the continuation of the Provisional Suspension would cause undue harm or prejudice to the Person Responsible. The FEI argued that the PR had not presented any new evidence as required by EAD Rules Article 7.4.3(i). That in the case at hand, involving the presence of a Banned Substance, a period of Ineligibility of two (2) years should be imposed by the FEI Tribunal in its final decision insofar as the conditions for eliminating, reducing or increasing the sanctions under EAD Rules Articles 10.4., 10.5 or 10.6 were not met, and that therefore the continuation of the Provisional Suspension would not cause harm or prejudice to the PR. The FEI therefore requested that the request to lift the Provisional Suspension be dismissed and the Provisional Suspension be maintained.
13. On 24 May 2011, the Preliminary Hearing panel issued a second Preliminary Decision, maintaining the Provisional Suspension.

4.5 Jurisdiction

14. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

4.6 The Person Responsible

15. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he was the rider of the Horse at the Event.

4.7 The Decision

16. 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 Reserpine in the Sample taken from the Horse at the Event. Reserpine is classified as a Banned Prohibited Substance by the FEI Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.

17. The FEI has thus established an *Adverse Analytical Finding*, and has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3.

18. In cases brought under the EADCMRs, a strict liability principle applies as described in EAD Rules Article 2.1.1. Once a positive case has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2.

19. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. With regard to the standard of proof to be met by the PR, EAD Rules Article 3.1, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".

20. The Tribunal is of the opinion that the PR has succeeded in establishing by a "*balance of probability*" how the Reserpine entered the Horse's system. According to his explanations, he had administered 3ml of Rakelin to the Horse on the day prior to the Competition. Rakelin contains 0,5 mg/ml of Reserpine. Therefore, the Horse had been administered 1,5 mg of Reserpine on the day prior to the Competition, which, by a balance of probability lead to the positive test result for Reserpine on the day of the Competition. The Tribunal therefore finds that the PR has established how the Prohibited Substance entered the Horse's system.

21. Accordingly, the Tribunal has to address the question of whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2 should be

applied.

22. In this context, the Tribunal takes note that the PR has been competing in national and international events since 1988. In light of this considerable period of time the Tribunal is of the view that the PR should have known that at a minimum he would have been obligated to seek written approval, in form of an *Equine Therapeutic Use Exemption* ("ETUE") by the FEI Veterinarian in charge at the Event for the administration of a Controlled Medication to the Horse. However, since ETUEs are not available for Banned Substances, the PR's efforts to secure the approval of the Organising Committee are moot as the Organising Committee would not have had the authority to approve the Horse competing with Rakelin under the applicable rules. Furthermore, the Tribunal considers it as grossly negligent by the PR to have competed with the Horse in the absence of an answer to his question whether or not the Horse was allowed to compete despite the administration of Rakelin. In the opinion of the Tribunal, the PR should have contacted the Organising Committee again prior to the start of the Competition, in order to obtain certainty about the situation. Should he then still not have received the answer to his question, the PR should have taken the most prudent approach and refrained from competing. Competing with the Horse at the Event without any certainty as to the nature of the Rakelin administration and its consequences constitutes a flagrant violation of the PR's obligation of ensuring that no Prohibited Substance is present in the Horse's body during Competition. The Tribunal therefore holds that the PR has not established that he bears "No Fault or Negligence" or "No Significant Fault or Negligence" for the EAD Rules violation.

23. According to EAD Rules Article 9, a violation of the EAD Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.

24. According to GRs Article 168.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

25. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won at the Event must be forfeited, in accordance with EAD Rules Article 9.

4.9 Sanctions

26. Under the newly promulgated EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the


following sanctions on the PR, in accordance with GRs Article 169 and EAD Rules Article 10:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 21 February 2011 to 4 August 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 20 February 2013.
- 2) The PR is fined **CHF 1,000.-**.
- 3) 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: No

FOR THE PANEL



THE CHAIRMAN, Pierre Ketterer