



DECISION of the FEI TRIBUNAL

dated 24 September 2009

Positive Medication Case No.: 2009/08

Horse: OMANI IMAN

FEI Passport No: UAE 01491

Person Responsible: Dhahi Abdulla Khamis Al Dhahi / UAE

Event: CEI 1* 119km, Al Wathba, Abu Dhabi, UAE

Prohibited Substances: Etorphine, Hydroxyxylazine

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen
Mr Erik Elstad
Mr. Patrick A. Boelens

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 22nd edition, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd 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**"), 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: Dhahi Abdulla Khamis Al Dhahi

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. The PR had been subject to a so-called "Fast Track" procedure under Article 25 of the Internal Regulations of the FEI Tribunal in February/March 2009 (OMANI IMAN 2009/10FT). Reason for this procedure had been a positive finding of the horse OMANI IMAN, ridden by the PR during the CEI2* 120km in Al Wathba, UAE, on 24 January 2009. The Prohibited Substance found in the horse OMANI IMAN was Naltrexone. The PR accepted the administrative sanctions offered to him on 13 March 2009.
2. In the following, the PR had been subject to an Anti-Doping procedure from mid March 2009 to June 2009 (Case 2009/05, CASTLEBAR KADEEN), in the context of an Anti-Doping Rule violation involving the substances Flunixin, Ketoprofen and Naltrexone. As a result of that procedure, on 5 June 2009, amongst others, a suspension of 10 months had been imposed on the PR.
3. OMANI IMAN (the "**Horse**") participated at the CEI 1* 119km, in Al Wathba, Abu Dhabi, UAE, on 14 March 2009 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Dhahi Abdulla

Khamis Al Dhahi, who is the Person Responsible in accordance with Article 118 GRs (the "**PR**").

4. The Horse was selected for sampling on 14 March 2009.
5. Analysis of the urine sample no. FEI-0092866 taken from the Horse was performed at the FEI approved laboratory, Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), by Colton Ho Fai Wong, Chemist, under the supervision of Mr. Terence See Ming WAN, Head of Racing Laboratory. The urine analysis revealed the presence of Etorphine and Hydroxyxylazine (Test Report no. 09-0364 dated 27 March 2009). Analysis of the blood sample no. FEI-0092866 was also performed at the HKJC, by Mr. Wai Him Kwok, Chemist, under the supervision of Mr. Terence See Ming WAN, Head of Racing Laboratory. That analysis revealed the presence of Xylazine (Test Report no. 09-0363 dated 27 March 2009).
6. Therefore, the Prohibited Substances detected are Etorphine, Xylazine and Hydroxyxylazine. Etorphine is a highly potent opioid analgesic with neuroleptanalgesic effect. Hydroxyxylazine is a metabolite of Xylazine and has sedative, analgesic and muscle relaxant effects. Etorphine is classified as "Prohibited Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "*Doping*". Hydroxyxylazine is classified as "Medication A" Prohibited Substance under the Equine Prohibited List.
7. The 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*".
8. No request was previously made to administer Etorphine, Zylazine or Hydroxyxylazine to the Horse, and no medication form had been submitted for any of these substances.

4.2 The Preliminary Hearing

9. 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 3 April 2009.
10. The notification of 3 April 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.
11. On 5 April 2009, the PR informed the FEI that he did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

12. Together with the Notification Letter of 3 April 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.
13. The PR declined to exercise his right to have the B-Sample confirmatory analyses performed.

4.4 The further proceedings

14. On 22 April 2009, the PR submitted his written explanations to the FEI. In his submission, the PR claims that he "had absolutely no knowledge of the horse having any Prohibited Substances".
15. The PR also submitted statements by Dr. Mario Castro Gugilemone, Veterinarian, and Mr. Mubarak Khalifa bin Shafya, Trainer and Manager, both dated 18 April 2009. Both Dr. Gugilemone and Mr. Bin Shafya deny the administration of any substances, and state that they could not offer any explanation for the presence of the Prohibited Substances. Mr. Bin Shafya resumes that he would have to consider that his stable is the victim of sabotage.
16. On 30 June 2009, the PR submitted his replies to an FEI Questionnaire. As to the question of instructions given and precautions taken by the PR to ensure compliance with the Equine Anti Doping and Medication Control Rules, FEI General Regulations and FEI Veterinary Regulations, the PR therein stated:

"At the time my knowledge of responsibilities as the Person Responsible was limited. I now understand and accept that it is the rider as the person responsible to confirm that the horse is free of any prohibited substances. I realise now I should have asked these questions but even now that I do understand this I have ridden over 50 times for the trainer without any positive tests in the past and had total confidence that any of the team would not administer any positive substances."

4.5 Jurisdiction

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

4.6 The Person Responsible

18. 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

19. 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 Etorphine, Xylazine and Hydroxyxylazine, 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.
20. 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.
21. 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. No such evidence was offered.
22. 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.
23. 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.
24. In deciding the sanctions, the FEI Tribunal notes that the PR is a repeat offender, having previously been subject to a so-called "Fast Track" procedure under Article 25 of the Internal Regulations of the FEI Tribunal in February/March 2009 (OMANI IMAN 2009/10FT). Reason for this procedure had been a positive finding of the horse OMANI IMAN, ridden by the PR during the CEI2* 120km in Al Wathba, UAE, on 24 January 2009.
25. In light of the first doping offence (Case 2009/05, CASTLEBAR KADEEN, Anti-Doping Rule violation involving the substances Flunixin, Ketoprofen and Naltrexone, suspension of 10 months) the

finding of the substances is technically not a repeat offence (Article 10.6 EADMCR) as the PR was informed in the Case 2009/05 on 16 March 2009 and the horse was selected for sampling in this case on 14 March 2009.

26. In deciding the sanction the Tribunal is free to fix a suspension for a period up to 4 years (Article 10.1 EADMCR). Within this frame the Tribunal is free to consider the former two rule violations of the PR as aggravating factors to determine the period of suspension. The former violations showed that the PR did at no time fulfil his duty to observe the rules to inform him of all substances administered to horses he is riding in competitions.
27. According to Article 9 EADMCR, disqualification from the event is automatic when there is a positive finding.
28. 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

29. 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

30. 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 **24 months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension and Suspension in the Case 2009/05 is credited against the period of ineligibility imposed in this decision.
 - 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:

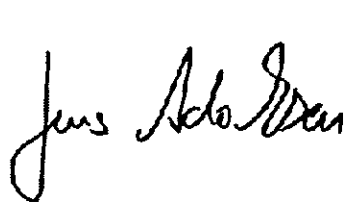
5.1 The person sanctioned: Yes

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

A handwritten signature in black ink, reading "Jens Adolphsen", is positioned to the left of a vertical line.

THE CHAIRMAN Prof. Dr. Jens Adolphsen