



DECISION of the FEI TRIBUNAL

dated 24 June 2011

Positive Anti-Doping Case No.: 2010/10

Horse: CONVERSANO GUSZTI

FEI Passport No: HUN 40242

Person Responsible: Gábor Plaszkó / HUN

Event: CAI-A 2, Zanka, HUN

Prohibited Substance: Morphine (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Erik Elstad, Chair
Mr. Philip O'Connor, member
Mr. Pierre Ketterer, 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, 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, updated 1 February 2008.

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

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, 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: Gábor Plaszkó

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. CONVERSANO GUSZTI (the "**Horse**") participated at the CAI-A 2 in Zanka, HUN, from 23 to 25 July 2010 (the "**Event**"), in the discipline of Driving. The Horse's carriage was driven by Mr. Gábor Plaszkó, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 23 July 2010.
3. Analysis of the urine and blood sample no. FEI-5504826 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("HFL") in New Market, UK, by Mr. Gavin Beamon, Scientist, under the supervision of Mr. Steve Maynard, Director of the Laboratory. The analysis of the urine sample revealed the presence of Morphine (Certificate of Analysis 62343 dated 6 August 2010).
4. The Prohibited Substance detected is Morphine. Morphine is an opiod analgesic used for pain relief and cough suppression. Morphine is categorized by the FEI as a *Banned Substance*.

Therefore, the finding of Morphine 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 26 August 2010. 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. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

7. Together with the Notification Letter of 26 August 2010, 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 for the B-Sample analysis, and to request that the B-Sample is analysed in a different laboratory than the A-Sample.
8. The PR confirmed on 15 September 2010 that he wished for the B-Sample analysis to be performed.
9. In the absence of a request by the PR to perform the B-Sample Analysis in a different laboratory than the A-Sample analysis, the B-Sample analysis was performed on urine on 20 September 2010 at HFL by Ms. Selina Hines, Senior Scientist, under the supervision of Mr. Clive Pearce, Sport Service Manager.
10. The PR did not attend the B-Sample analysis and did not request or send a representative to the Laboratory. Therefore, Mr. Paul Brown of HFL Sport Science (Nutrition and Fitness) witnessed the opening and identification of B-Sample no. 5504826.
11. In his witness statement, Mr. Brown certified that the sealed "B" Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the sample to be tested by the HFL Sport Science corresponds to that appearing on the collection documentation accompanying the sample*".
12. The B-Sample Analysis of the urine confirmed the presence of Morphine (Certificate of Analysis: 63352 dated 23 September 2010).
13. The results of the B-Sample Analysis were notified to the PR on 13 October 2010 through the Hungarian Equestrian Federation (HUN).

4.4 The Further Proceedings

14. The PR submitted his explanations on 3 September 2010 and 2 November 2010. In his explanations, he claimed that he never used any Prohibited Substances on the Horse. Instead, the PR submitted a Veterinary Report by the treating veterinarians DVM Kutasi Orsolya and DVM Sárdi Sára, detailing an April 2010 examination of the Horse during which the Horse was diagnosed with exercise induced pulmonary hemorrhage (EIPH) and suspected secondary macro- and micro bronchitis. The PR explained that following the diagnosis the Horse was treated for one week with antibiotics, and that upon recommendation by his veterinarians, he ordered a product called Pulmon-EZ online in order to treat the Horse. The PR has also submitted a leaflet describing the Pulmon-EZ product, which was downloaded from the internet.
15. In his submission of November 2010, the PR explained having been in contact with the manufacturer of the Pulmon-EZ product, who had confirmed that the product was "doping free". That he had also contacted the clinic where the Horse had been examined in April 2010, and learnt that Domosedan inj., Alvegesic inj. and Lidocain 2% inj. were used during the April 2010 clinical examination. The PR further explained that he suspected the Horse's feed had been contaminated and had asked the FEI's authority to have analyses performed on his feed.
16. By email of 3 February 2011, the FEI informed the PR that no authorization was required to conduct any further investigations on the feed, but that any such investigations would have to be conducted at his own expense.
17. By letter of 30 March 2011, the PR explained that he lacked sufficient amount of the feed given to the Horse at the time of the Event, and that he therefore could not perform the intended investigation.
18. The FEI responded to the PR's submissions on 14 April 2011. The FEI argued that the PR failed to establish how the Prohibited Substance entered into the Horse's system. Even according to the PR, the Pulmon EZ product used did not contain Morphine and neither did the antibiotics. Regarding the PR's fault or negligence for the rule violation, the FEI reminded the PR of the strict liability concept underlying the FEI anti-doping system. The FEI highlighted that the PR had not reported having taken any precautions to ensure that the Horse was free of Prohibited Substances at the time of the competition. In conclusion, the FEI contended that the PR had not established that he bore No Fault or Negligence or No Significant Fault or Negligence for the rule violation.
19. In his response submission of 4 May 2011, the PR explained that he was an amateur in the sport, residing on the highlands of the

northern part of Hungary. That in this area, it was difficult for him to supply forage for his horses, and that his entire family had to make sacrifices in order to be able to afford the horses and compete in equestrian sport. That in 2010, the family's home and its surroundings were damaged by storms and flood, rendering gathering of fodder even more difficult. That one of his neighbours was growing poppy seeds on a 30 hectare area, and that in June 2010, parts of this neighbour's poppy seed plantation was flooded, destroying the poppy seed before the harvest. That the neighbour had invited him to collect hay on the destroyed poppy seed plantation, which he did after 10 July 2010. The PR concludes that insofar as the poppy seed had been under water for several days, some infection had been caused to the hay fed to the Horse. The PR stated that he did not have the intent to mislead anybody, and that he would be more careful in the future.

4.5 Jurisdiction

20. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADCMRs.

4.6 The Person Responsible

21. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he was the driver of the Horse's carriage at the Event.

4.7 The Decision

22. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Morphine, which is classified as a Banned Prohibited Substance, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.

23. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Equine Anti-Doping Rules ("*EAD Rules*") Article 3.

24. In Doping and Medication cases, 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.

25. 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*". The Tribunal finds that the PR has not proven how the Morphine entered into the Horse's system. Neither the Pulmon EZ product used on the Horse nor the antibiotics it was treated with contain any Morphine. Furthermore, together with his last explanations of 4 May 2011, the PR does not provide any concrete evidence that his Horse actually consumed poppy seed hay or how the alleged ingestion by the Horse of poppy seed hay a couple of days prior to the competition could have possibly resulted in the positive finding for Morphine. Therefore, the Tribunal concludes that the PR has not met the standard of proof necessary to establish how the Morphine entered into the Horse's system. Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Articles 10.5.1 and 10.5.2 could be applied.

26. But even if the PR had established the source of the Prohibited Substance, the Tribunal is of the opinion that the PR did not demonstrate that he bore "*No Fault or Negligence*" or "*No Significant Fault or Negligence*" for the positive finding. Specifically, the PR should have ensured that his Horse would not be at risk of being in contact with Prohibited Substances. In particular, even under difficult agricultural and financial circumstances, he should have made the minimum verifications to ensure that any feed given to the Horse was free of Prohibited Substances. Persons Responsible have to ensure that all precautions are taken to be certain that their horses participate in international competitions without Prohibited Substances. The Tribunal therefore considers that the PR acted negligently in performing his duties as a competitor and a Person Responsible.
27. In deciding the appropriate sanctions in this case, the Tribunal has taken into account the amateur status of the PR as well as the efforts made to determine the source of the Prohibited Substance.
28. According to EAD Rules Article 9, a violation of the EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition.
29. 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

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

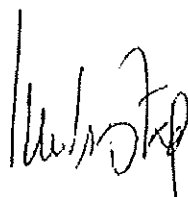
31. Under the newly promulgated Equine Anti-Doping and Controlled Medication Regulations, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 GRs and EAD Rules Article 10:

- 1) The PR shall be suspended for a period of **2 (two) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 26 August 2010 to 24 June 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 25 August 2012.
- 2) The PR is fined **CHF 1,500.-**.
- 3) The PR shall contribute **CHF 2,000.-** towards the legal costs of the judicial procedure.
- 4) The PR shall cover the costs of the Confirmatory analysis request in the amount **CHF 500.-**.

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 Erik Elstad