



DECISION of the FEI TRIBUNAL

dated 23 September 2009

Positive Medication Case No.: 2009/10

Horse: LIENKA

FEI Passport No: UAE 41013

Person Responsible: Rashed Salem Mohd Al Faresi

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

Prohibited Substances: Etorphine

1. COMPOSITION OF PANEL

Mr. Philip O'Connor
Mr. Erik Elstad
Prof. Dr. Jens Adolphsen

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: Rashed Salem Mohd Al Faresi

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. LIENKA (the "**Horse**") participated at 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 Rashed Salem Mohd Al Faresi, who is the Person Responsible in accordance with Article 118 GRs (the "**PR**").
2. The Horse was selected for sampling on 14 March 2009.
3. Analysis of the urine sample no. FEI-0092904 taken from the Horse was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), by Mr. Colton Ho Fai Wong, Chemist, and under the supervision of Mr. Terence See Ming Wan, Head of the Racing Laboratory. The urine analysis revealed the presence of Etorphine (Test Report no. 09-0362 dated 26 March 2009).
4. The Prohibited Substance detected is Etorphine. Etorphine is a highly potent opioid analgesic with neuroleptanalgesic effect and a stimulant in small doses. This substance, when present in a Horse's body, is

classified as a "Prohibited Substance" 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 Etorphine to the Horse, and no medication form had been submitted for the Prohibited Substance.

4.2 The Preliminary Hearing

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences involved, were officially notified to the PR by the FEI Legal Department on 3 April 2009.
7. The notification of 3 April 2009 included notice that the Person Responsible was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 3 April 2009, 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 informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

4.4 The further proceedings

11. On 18 April 2009, the PR submitted his written explanations to the FEI. In his submission, the PR claims that he had no idea that the Horse was competing on a Prohibited Substance and that he himself had not given any Prohibited Substances to the Horse.
12. Together with his explanations, the PR also submitted a statement by the trainer of the Horse, Hassan Al Bloushi, dated 18 April 2009. Mr. Al Bloushi affirmed that he also had not administered any Prohibited Substance to the Horse, and had not requested that any member of his staff do so. Further, he also explained that he had not even heard of the substance before the notification of the present case.
13. In addition, on 30 June 2009, the PR submitted his responses to the FEI Questionnaire. The PR highlighted that he was "absolutely

clear" now of the responsibilities of the rider, and that in the future it will be his intention to ask the stable/stable veterinarian to sign that he had done his best to ascertain that the horse is free of any Prohibited Substances and that if any medication had been given, the recommended withdrawal time has satisfactorily passed.

4.5 Jurisdiction

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

4.6 The Person Responsible

15. 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

16. 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, which is a 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 finding.
17. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EADMCR. The Prohibited Substance is classified as a "Doping" Prohibited Substance.
18. 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.
19. 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.
20. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible.
21. According to Article 9 EADMCR, disqualification from the event is automatic when there is a positive finding.

22. In deciding the sanctions, the FEI Tribunal notes that the PR is a repeat offender, having previously, while still a minor, been subject to a so-called "Fast Track" procedure under Art. 25 of the Internal Regulations of the FEI Tribunal in March 2007 (GLENLEIGH SAPHIRE 2007/04) because of a positive finding in the Horse GLENLEIGH SAPHIRE during the CEI2* 100km in Boudthib, UAE, on 11 November 2006. The Prohibited Substance found in the horse GLENLEIGH SAPHIRE was Diclofenac. The PR accepted the administrative sanctions offered to him on 25 March 2007. Further, the Tribunal, while noting the blanket denials of the PR and the trainer as to administration of any Prohibited Substance also notes the absence of evidence as to stable security, the absence of evidence as to full inquiries regarding the circumstances of the present findings. All this is regarded as unsatisfactory.
23. 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

24. 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

25. 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 **15 (fifteen) months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective since 3 April 2009, shall be credited against the period of Ineligibility imposed in this decision.
 - 2) The PR is fined **CHF 1.500-**.
 - 3) The PR shall contribute **CHF 1.500-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

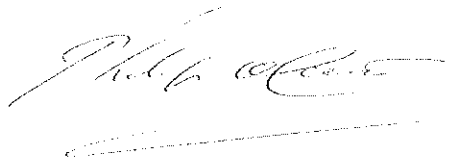
5.1 The person sanctioned: Yes

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, appearing to read 'Philip O'Connor', with a horizontal line underneath it.

THE CHAIRMAN Mr Philip O'Connor