



DECISION of the FEI TRIBUNAL

dated 11 October 2011

Positive Anti-Doping Case No.: 2011/BS11

Horse: BURBERRY SPOT

FEI Passport No: ITA 42894

Persons Responsible:

- Sofia Grassi/ITA/10060787
- Debora Savoia/ITA/10060788
- Matilde Manca/ITA/10075727
- Alice Bacchelli/ITA/10075725
- Matilde Brana'/ITA/10075728
- Guendalina Luppi/ITA/10059410
- Anna Beltramin/ITA/10075730
- Michela Callegari/ITA/10026646

Event: CVI2* Firenze, ITA

Prohibited Substance: Azaperone (Banned Substance)

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo, Chair
Mr. Erik Elstad, 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 and at the oral hearing, as also made available by and to the PRs.

2.3 Oral hearing: by conference call on 14 July 2011

Present:

The Tribunal Panel

For the PRs: Ms. Michela Callegari, Lunger
Ms. Frauke Gilhof, Representative for the minor Vaulters
Mr. David Holmes, Sports Director Italian Equestrian Federation (FISE)

For the FEI: Ms. Lisa F. Lazarus, General Counsel
Mr. Mikael Rentsch, Senior Legal Counsel
Ms. Carolin Fischer, Legal Counsel

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, 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 ("**EADCMRs**"), 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 5 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 Persons Responsible:

- Sofia Grassi/ITA/ 10060787
- Debora Savoia/ITA/10060788
- Matilde Manca/ITA/10075727
- Alice Bacchelli/ITA/10075725
- Matilde Brana'/ITA/10075728
- Guendalina Luppi/ITA/10059410
- Anna Beltramin/ITA/10075730
- Michela Callegari/ITA/10026646

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. BURBERRY SPOT (the "**Horse**") participated at the CVI2* in Firenze, ITA, from 15 to 17 April 2011 (the "**Event**"), in the discipline of Vaulting. At the Event, the Horse was lunged by Ms. Michela Callegari (the "**Lunger**") with the vaulters: Ms. Sofia Grassi, Ms. Debora Savoia, Ms. Matilde Manca, Ms. Alice Bacchelli, Ms. Matilde Brana, Ms. Guendalina Luppi and Ms. Anna Beltrami (the "**Vaulters**"; the Lunger and the Vaulters together are forthwith referred to as the "**PRs**").
2. At the time of the Event, the Vaulters were between the ages of eleven (11) and fifteen (15) years.
3. The Horse was selected for sampling on 17 April 2011.
4. Analysis of the urine and blood sample no. FEI-5506814 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("**HFL**") in Newmarket, UK, by Mr. Gavin Beamon, Scientist, under the supervision of Mr. Clive Pearce, Sport Service Manager of the Laboratory. The analysis of the blood sample revealed the presence of Azaperone. The urine sample also contained metabolites of Azaperone (Certificate of Analysis 67579 dated 6 May 2011).
5. The Prohibited Substance detected is Azaperone. Azaperone is a general anaesthetic and tranquiliser not commonly used in horses. Azaperone is used for sedation and may lead to behavioural modifications. Azaperone is categorized by the FEI as a Banned Substance. Therefore, the finding of Azaperone constitutes an Anti-Doping rule violation.

4.2 The Proceedings

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PRs by the FEI Legal Department on 25 May 2011. The Notification Letters included notice that the PRs were provisionally suspended and granted them the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
7. The Lunger requested a Preliminary Hearing. The parents of the minor Vaulters appointed Ms. Gilhof, Chef d'Equipe at the Event for the minor Vaulters, as representative for the Preliminary Hearing.
8. A Preliminary Hearing took place on 31 May 2011. Prior to the Preliminary Hearing, the Lunger submitted a statement in which

she explained that the tent covering the arena at the Event had been open on one side; that the tent flapped in the wind and made noise frightening some horses, including BURBERRY SPOT; that she had asked several times for the tent to be closed, but to no avail; that she had then unsuccessfully tried to calm the Horse with some homoeopathic product; that a friend had recommended a different product to her and had represented that using it would not be considered doping, and that ultimately, she did not see any other solution than to use the product to calm the Horse; that during the Event, she had the sole responsibility for the care of the Horse, and that she had taken the decision to treat the Horse in order to guarantee the safety of the minor Vaulters by calming the Horse; and that she had not told anybody of the treatment, in particular not the minor Vaulters.

9. Ms. Gilhof explained during the Preliminary Hearing that the discipline of Vaulting was different from other FEI disciplines insofar as vaulters were not typically involved at all with the care and management of the Horse. That this team of the minor Vaulters was a very young team, without a captain or similar individual assuming a leadership position within the team, and therefore this team relied even more than others on the Lunger for the care of the Horse.
10. During the Preliminary Hearing, the FEI opposed the lifting of the Provisional Suspension of the Lunger. With regards to the minor Vaulters, given their young ages, the unique structure of the discipline of Vaulting, and the admission of the Lunger that she had administered the substance without informing the Vaulters and that she had sole responsibility for the care and management of the Horse, taken together, the FEI took the position that there was a high likelihood that the Vaulters could prove that they bore no fault for the rule violation under Article 10.5 EAD Rules. The FEI, therefore, did not oppose the lifting of the Provisional Suspensions of the Vaulters, under the specific circumstances of this case.
11. Following the Preliminary Hearing, the Provisional Suspension of the Lunger was maintained by the Preliminary Hearing Panel. The Provisional Suspensions of the Vaulters were lifted as of 31 May 2011.

4.3 The B-Sample Analysis

12. Together with the Notification Letters of 25 May 2011, the PRs also received notice that they were entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PRs were also informed of their 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.
13. The PRs declined to exercise their right to have the B-Sample confirmatory analysis performed.

4.4 The Further Proceedings

14. The Lunger did not submit any further explanations. On 8 July 2011, the parents of the minor Vaulters submitted a common statement. They explained that the minor Vaulters were not aware of the treatments given to the Horse, and that, during the Event, the care of the Horse was under the control of the Lunger. With regards to the Lunger, the parents stated that they appreciated the Lunger's work and that she had been a good trainer and lunger for the Vaulters. The Vaulters' parents also stated that it was their understanding that the Lunger's motivation for the administration of the Prohibited Substance was purely in the interest of the safety of the minor Vaulters, their children.
15. The FEI did not respond in writing to the PRs' submissions.
16. The Final Hearing took place on 14 July 2011, by means of a telephone conference call. During the Final Hearing, the FEI argued that the Lunger, by means of her admission that she had treated the Horse during the Event, had established how the Prohibited Substance entered the Horse's system. The FEI stated that it appreciated that the Lunger had admitted the facts quickly, and that she had taken responsibility for the violation. Furthermore, the FEI recognised that the Lunger had acted in order to protect the safety of the minor Vaulters. That, however, the admission of the administration of a Prohibited Substance to the Horse was at the same time an admission that the substance had been administered to enhance the performance of the Horse, insofar as a calm and steady horse is easier to vault than a non sedated horse. The FEI contended that, therefore, a violation under the EAD Rules was established. As to sanctions, the FEI explained that given the facts, under the current EAD Rules a period of two (2) years of Ineligibility applied under Article 10.2 EAD Rules. That the Lunger had not provided any reasons for eliminating or reducing the sanctions under Articles 10.4 or 10.5 EAD Rules. That, however, given the timely admission by the Lunger, Article 10.9.2 EAD Rules would apply. The FEI, therefore, suggested to the Tribunal that the period of Ineligibility could start at the date of sample collection, namely, on 17 April 2011. In response, the Lunger highlighted that she had asked several times for the tent to be closed since the noise made the situation very dangerous. That the Horse had been last of fourteen (14) horses at the Competition in question, and that she did not act in order to win, but only in order to protect the safety of the minor Vaulters who were vaulting on the Horse.
17. With regard to the minor Vaulters, the FEI acknowledged that they had demonstrated, through the admission of the Lunger, how the Prohibited Substance had entered the Horse's system. That the minor Vaulters bore no Fault for the rule violation given that the custody and control of the Horse was the responsibility of the Lunger and that they were unaware that a Prohibited Substance had been administered to the Horse. The FEI, therefore, requested that in light of the unusual circumstances, which are unique to the particularities of the case, no period of Ineligibility should be imposed on the Vaulters.

4.5 Jurisdiction

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

4.6 The Persons Responsible

19. The Vaulters are the Persons Responsible for the Horse, in accordance with Article 118.3 GRs, first sentence, as they were vaulting the Horse at the Event. The minor Vaulters were under eighteen (18) years when their entries were submitted and were, therefore, minors in accordance with Article 118.4 GRs. The Lunger is an additional Person Responsible in accordance with Article 118.3 GRs, second sentence.

4.7 The Decision

20. 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 HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Azaperone, which is classified as a Banned Substance, in the sample taken from the Horse at the Event. The PRs did not request a B-Sample analysis, and did not contest the accuracy of the test results or the positive findings.
21. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EAD Rules.
22. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 EAD Rules. 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 Article 10.5.1 EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5.2 EAD Rules.
23. However, as a prerequisite to the application of Article 10.5. EAD Rules, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. With regard to the standard of proof to be met by the PR, Article 3.1 EAD Rules, second sentence stipulates that the PR has to establish "specified facts or circumstances" "by a balance of probability".
24. In the opinion of the Tribunal, the PRs, by means of the admission of the Lunger, have met the standard of proof necessary to establish how the Azaperone entered into the Horse's system. The Tribunal, therefore, finds that the PRs have proven how the Azaperone entered into the Horse's system.
25. Accordingly, the Tribunal has to address the question of whether any elimination or reduction of the otherwise applicable sanctions by virtue of Articles 10.5.1 or 10.5.2 EAD Rules could be applied.
26. The Tribunal is of the opinion that the Lunger did not demonstrate

that she bore "No Fault or Negligence" or "No Significant Fault or Negligence" for the positive finding. Specifically, the Lunger administered the product containing the Prohibited Substance to the Horse following a recommendation by a friend. The Lunger should have sought veterinary advice about the product and its use and should have consulted the FEI's Prohibited Substance database which is readily available on the FEI website to any user at no cost. The Lunger, therefore, did not take the necessary precautions to ensure that the Horse was competing without any Prohibited Substances in its system. The Tribunal, therefore, finds that the Lunger was at fault in performing her duties as an Athlete and an additional Person Responsible. With regards to the minor Vaulters, the Tribunal takes into account that in the discipline of team Vaulting each of the Athletes competing as a vaulting team member is considered a "Person Responsible", leading to several Athletes being considered Persons Responsible for the same positive anti-doping rule violation. Taking further into account the admission by the Lunger and the fact that it has been established that the minor Vaulters had no care, control or custody over the Horse during the entirety of the Event as a consequence of the fact that they are children and their parents entrusted such care to the Lunger, the Tribunal holds that the minor Vaulters do not bear any Fault or Negligence for the rule violation.

27. In deciding the appropriate sanctions in this case, the Tribunal has taken into account the timely admission by the Lunger, the fact that the minor Vaulters were minors at the time when the entries were submitted, and the specifics of the discipline of Vaulting and of this case.
28. The Lunger claims that her actions did not intend to affect the results of the competition but merely to safeguard the safety and health of the minor Vaulters. The Tribunal believes the Lunger and accepts that her actions were intended only to ensure that the Horse remained calm and safe for the Vaulters. The Tribunal, however, cannot accept that this may influence the period of Ineligibility under the EAD Rules. Lungers (or other PRs) faced with similar situations have only one option available to them if they believe that participation is dangerous and Event organisers and officials do not respond to pre-warnings: not to participate at the Event and to later seek clarifications from the organisers and from the FEI.
29. According to Article 9 EAD Rules, 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.
30. According to Article 168.4 GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

31. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PRs from the Competition and all medals,

points and prize money won at the Event must be forfeited, in accordance with Article 9 EAD Rules.

4.9 Sanctions

32. Under EADCMRs 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 PRs, in accordance with Article 169 GRs and Article 10 EAD Rules:

- 1) The Lunger is suspended for a period of **2 (two) years** to be effective immediately and without further notice. The period of Ineligibility will be credited from the time of Sample collection, i.e. on 17 April 2011. Therefore, the PR shall be ineligible to participate in FEI activities through 16 April 2013.
- 2) No period of Ineligibility is imposed on the minor Vaulters.
- 3) No fine is imposed on the Lunger.
- 4) The Lunger shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure.
- 5) Each one of the seven Vaulters shall contribute **CHF 100.-** 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 Event through his NF: Yes**
- 5.4 Any other: No**

FOR THE PANEL



THE CHAIRMAN Ken E. Lalo