



DECISION of the FEI TRIBUNAL

dated 11 August 2009

Positive Medication Case No.: 2009/13

Horse: EO FAWATI

FEI Passport No: ESP 04155

Person Responsible: Sheikh Hamdan Bin Mohd Al Maktoum

Event: CEI 2* 120km, Sakhir, BRN

Prohibited Substance: 16-b Hydroxy-Stanozolol

1. COMPOSITION OF PANEL

Mr. Patrick A. Boelens
Mr. Philip O'Connor
Mr. Erik Elstad

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.

At the time of the Event General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174; as of 1 January 2009: 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: Sheikh Hamdan Bin Mohd Al Maktoum

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. EO FAWATI (the "**Horse**") participated at the CEI 2* 120km in Sakhir, Bahrain, on 10 January 2009 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Sheikh Hamdan Bin Mohd Al Maktoum, who is the Person Responsible in accordance with Article 118 GR (the "**PR**").
2. The Horse was selected for sampling on 10 January 2009.
3. Analysis of the urine sample no. FEI-0076542 taken from the Horse was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**"), in Paris, by Maëlle Bouscarel, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director of the Laboratory. The analysis revealed the presence of 16-b Hydroxy-Stanozolol (Certificate of Analysis dated 4 February 2009).
4. Therefore, the Prohibited Substance detected is 16-b Hydroxy-Stanozolol. 16-b Hydroxy-Stanozolol is a metabolite of Stanozolol, which is an anabolic steroid with anabolic and androgenic effects. This substance, when present in a Horse's body, is classified as "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 16-b Hydroxy-Stanozolol to the Horse, and no medication form had been submitted for the substance.

4.2 The Proceedings

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 6 April 2009.

7. The Notification Letter of 6 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 6 April 2009, the PR also received notice that he was entitled to the performance of B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. On 24 April 2009, Lynda Zaccak, Legal Advisor for the Dubai Racing Club and counsel for the PR, wrote to the FEI alleging that they had only received the Notification Letter that day. The PR informed the FEI that he would be investigating as to the delay of the receipt of the Notification Letter. The PR requested that the deadlines set by the Notification Letter be extended.
11. Upon further email exchange concerning the reasons for the alleged delay of receipt, the FEI, on 28 April 2009, granted an extension of all deadlines until 8 May 2009.
12. On 8 May 2009, Counsel for the PR informed the FEI that the United Arab Emirates Equestrian & Racing Federation had forwarded the Notification Letter to the PR on 22 or 23 April 2009. By the same letter, the PR requested a confirmatory B-Sample analysis. The PR waived his right to attend the identification and opening of the B-Sample and to send a representative to the Laboratory. But in connection with his request for the B Sample analysis, he asked that it be performed in a lab different from LCH, which had tested the A Sample.
13. By its response of 11 May 2009, the FEI informed the PR that the current FEI policy is that all A and B Samples are analysed in the same laboratory. The FEI Legal Department explained its rationale for the "same laboratory" rule as being in the PR's best interest, since using two different laboratories presents a risk of breaks in the chain of custody. Additionally, that the PR's rights are protected by the fact that the B-Sample analysis, in accordance with the FEI Standard for Laboratories, is performed by a different analyst. Consequently, the FEI Legal Department made clear that the B-Sample would be tested in the same Laboratory as the A- Sample.
14. The B-Sample Analysis was performed on urine on 18 and 19 May 2009 at the LCH by Mylène Roche, Senior Analyst.
15. The PR did not attend the opening and identification and did not send a representative to the Laboratory. Therefore, Mr. Frederic Balssa, Quality Manager at the LCH, witnessed the opening and identification of the B-Sample.
16. In his witness statement, Mr. Frederic Balssa, 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 Laboratoire des Courses Hippiques corresponds to that appearing on the collection documentation*

accompanying the sample" (Witness Statement dated 18 May 2009).

17. The B-Sample Analysis of the urine confirmed the presence of 16-b Hydroxy-Stanozolol (Certificate of Analysis N° 0076542 dated 19 May 2009).
18. The results of the B-Sample Analysis were notified to the PR on 26 May 2009 through the United Arab Emirates Equestrian & Racing Federation.

4.4 The further proceedings

19. On 12 May 2009, the FEI wrote to the United Arab Emirates Equestrian & Racing Federation requesting proof that the PR had received the Notification Letter in this case, as had been initially requested within the Notification Letter itself.
20. On 18 May 2009, Taleb Dhaher Muhairi, Secretary General of the United Arab Emirates Equestrian & Racing Federation, informed the FEI that "*they* [the Persons Responsible] *are in receipt of them* [the Notification Letters dated 6 April and 24 April 2009 of the positive cases of the horses EO FAWATI and TAHHAN] *at the same time as I myself had taken up the task of handing over the respective notifications personally to the Persons Responsible*". The request by the FEI of 19 May 2009 for further clarification as to the date the PR received the respective Notification Letter was never responded to by the NF.
21. Following another extension of time to provide his submission, the PR, on 28 June 2009, submitted his written explanations to the FEI. Together with his written explanations, the PR also submitted a statement by himself dated 25 June 2009, as well as the following witness statements in support of his case: Witness Statement by Dr. James Clayton Bryant, Senior Veterinarian at the Emirates Endurance Stables, dated 24 June 2009; Witness Statement by Jaume Punti Dachs, Head Trainer and Stable Manager for the Emirates Endurance Stables, dated 18 June 2009; Witness Statement by Jonatan Andres Rivera, Assistant Trainer to the Head Trainer of Emirates Endurance Stables, dated 24 June 2009; Witness Statement by Jabir Hussean, Assistant Foreman and groom at Dubai Racing Club, main groom for the Horse, dated 24 June 2009.
22. According to the above statements, upon consultation with Mr. Rivera, Mr. Dachs had selected the Horse, about ten (10) days prior to the competition in question, to be ridden by the PR. The main groom for the Horse, Mr. Hussean, had custody of the Horse prior to and after the Event, and it was Mr. Hussean who handed over the Horse to the PR. Summarizing the witness statements, the PR himself recognizes in his submission that despite investigations having been undertaken, he has not been able to determine how the Prohibited Substance entered the Horse's system, and none of the statements identified who, if anyone, administered the Prohibited Substance to the Horse. The PR admits that he simply does not know how the substance entered the Horse's system.
23. The PR also submitted a document entitled "Patient History [EO FAWAITH]" of the Dubai Equine Hospital listing the medications received by the Horse in the period of 18 October 2007 to 30 April 2009 as well as answers to the FEI Questionnaire for Completion by the PR.

24. In his submission, the PR claims that the notification of the positive A sample was untimely and therefore in breach of Article 7.1.3 EADMCR.
25. The PR further submits that the first time he saw the Horse was on the day of the race, only a couple of minutes before the competition started. However, his statement is somewhat confusing on that point as Paragraph 4 contains a clause providing "we must get details as to previous contact and access" which may mean that the information on prior contact is not complete. Nonetheless, the PR states that he inquired as to whether all was well with the Horse, and was assured that all was in order. The PR confirms that he did not administer the Prohibited Substance to the Horse and has never had any knowledge regarding the presence of the Prohibited Substance in the Horse. Further, that if he had been aware of the administration of a Prohibited Substance, he would not have ridden the Horse.
26. The PR concludes that, since he could not have possibly known that the Horse's system contained a Prohibited Substance, the requirements of "No Fault or No Negligence" or "No Significant Fault or No Significant Negligence" as set forth in Articles 10.5.1 and 10.5.2 EADMCR are satisfied, allowing for the reduction or elimination of the period of Ineligibility.
27. Further, that he is an amateur rider competing for several stables and that he is typically presented with a choice of which horse to ride only on the day of a race. The PR submits that his family has an interest in some 700 horses in the field of Endurance Racing and that he cannot be involved in the medication protocols of each Horse. Therefore he contends it is reasonable for the Person Responsible to rely upon the stables, the trainer and the veterinarians to present Horses that are fit to ride and which are not in breach of the EADMCRs or other applicable rules and regulations of the FEI. Further, that it was contrary to routine practice in the UAE, particularly for amateur riders, to involve themselves in, or make specific enquiry into the Horse's medication, which are matters customarily dealt with by trainers and veterinarians.
28. As a final note, the PR opines that with the increasing popularity of the sport of endurance racing, trainers, veterinarians, grooms and other stable staff are becoming increasingly competitive, and that, whereas he would not believe that his trainers or veterinarians would have acted in breach of the FEI Rules, he could not

"[...] be so certain that those more junior staff might not be involved and administer substances in the mistaken belief that their seniors will be impressed by the success of the riders. It is likely that there is intense competition amongst grooms, and this might lead to errors of judgement by them."

Nonetheless, the statement did not contain any concrete information on how the Prohibited Substance entered into the Horse's system.

29. On 29 July 2009, and upon request of the FEI Tribunal, the FEI submitted a Veterinary Statement by Dr. Kent Allen, U.S. Veterinarian and member of the FEI Veterinary Committee, commenting on the medical history of the Horse. On 31 July 2009, the above Veterinary Statement was transmitted to the PR's Counsels with a deadline to respond to it.
30. On 4 August 2009, the PR's Counsels informed the FEI that they did not wish

to respond to the Veterinary Statement in order to not delay a final decision in this matter.

31. The Tribunal is of the opinion that this additional Veterinary Statement does not bring any new evidence to light and does not raise any additional questions and is accordingly excluded from consideration.

4.5 Jurisdiction

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

4.6 The Person Responsible

33. The PR is the Person Responsible for the Horse, in accordance with GR Art. 118, as he was the rider of the Horse at the Event.

4.7 The Decision

34. The Tribunal is satisfied that the Laboratory reports relating to the A-Sample and B-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of the LCH are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of 16-b Hydroxy-Stanozolol, 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.

35. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EADMCR. The Prohibited Substance in this case, when present in a sample, is classified as a "Doping" Prohibited Substance.

36. In doping and medication cases, the doctrine of strict liability as described in Article 2.1.1 EADMCR is applied. 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, Article 10.5.1 EADMCR, or No Significant Fault or No Significant Negligence, Article 10.5.2 EADMCR. Significantly, in order to avail himself of the defences set forth in Articles 10.5.1 and 10.5.2 EADMCR, the PR must also establish how the Prohibited Substance entered into the Horse's system.

37. The Tribunal is of the opinion that the PR did not suffer any prejudice due to the fact that it took some time for the FEI to gather all the necessary information, thereby making sure that the initial notification was handled with full respect for the PR's rights. Moreover, when considering all the circumstances in relation to the handling of the case, the Tribunal finds that the notification was prompt according to Article 7.1.3 EADMCR.

38. The Tribunal is also of the opinion that the fact that both the A-sample and the B-sample were analysed in the same Laboratory does not have any impact on the fairness of the handling of this case. The Tribunal accepts the FEI's arguments on this point as set forth in 4.3., paragraph 13 above. The Tribunal further highlights that for reasons of equal treatment of all Anti-Doping and

Medication Control cases, the decision to have the B-Sample performed in the same laboratory as the A-sample was the appropriate decision. Furthermore, the same Laboratory rule is consistent with the international standard set forth in the 2009 WADA Code.

39. Since the PR, his trainer, his treating veterinarian and the main groom for the Horse are unable to provide the Tribunal with an explanation for the presence of the Prohibited Substance in the Horse's system, the PR remains entirely personally responsible for the presence of the Prohibited Substance in his Horse according to the strict liability principle incorporated within the EADMC Rules.
40. Further, the PR in every case has an absolute responsibility to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its System.
41. Significantly, the statements of the PR, his trainer, his treating veterinarian and the main groom for the Horse establish that none of them administered the Prohibited Substance to the Horse. Consequently, it is notable that the PR references potentially suspicious activity amongst the "more junior staff". This is notable because there is no evidence in the record that the PR took any action whatsoever to prevent possible EADMCR violations by such junior staff members of his family's stables.
42. Against this backdrop, the Tribunal questions why the PR did not provide any evidence more generally regarding whether those who are employed at the Emirates Endurance Stable in Dubai receive strict written instructions that no Prohibited Substances are to be administered to any of the Horses.
43. 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. The competitors are also responsible for how their staff care for the Horses and administer medical treatment to them.
44. Generally, therefore, the Tribunal is of the opinion that competitors are responsible for the actions of their stable staff. However, the Tribunal also recognizes that the application of this rule can be different when it comes to PRs with high social and governmental status. While the Tribunal would not expect the PR in this case to be personally working in the stables, the Tribunal does expect him to enforce appropriate stable management that demonstrates respect for the applicable rules and horse welfare. Further, the Tribunal would expect evidence of such excellent stable management to be submitted in such cases so that the Tribunal can be comforted that the PR's family stables are being properly and effectively supervised so as to ensure a high likelihood of compliance with FEI Rules. No such evidence was submitted in this case.
45. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible given that he was aware that there is increasing competition amongst junior stable staff, which would lead to those taking part in the "competition" administering, without possessing the necessary knowledge and skills, Prohibited Substances in order for the respective Horse to be successful in endurance racing.

46. The Tribunal understands that the Crown Prince of Dubai will have less time to follow up his responsibilities in this respect. However, lack of knowledge of the presence of the Prohibited Substance in the Horse's body does not render Articles 10.5.1 or 10.5.2 EADMCR applicable in this case. In fact, it is quite the opposite as for Articles 10.5.1 and 10.5.2 EADMCR to apply, the PR must demonstrate how the substance entered into the Horse's system, which he failed to do in this case. The mere lack of knowledge of the presence of the Prohibited Substances in the Horse's body falls short of fulfilling these requirements. Furthermore, and as explained above under paragraph 44, the fact that the PR had some doubts as to the correctness of the behaviour of the junior staff members, but did not at all intervene, shows that he acted negligently.

47. Accordingly, the PR remains responsible for the presence of the Prohibited Substance in his Horse, in accordance with the strict liability principle incorporated within the EADMC Rules. This strict liability of the PR is necessary in the fight against doping and to protect the principles of fair play and promotion of equal conditions in the conduct of international events, as well as with regard to Horse welfare.

48. In deciding the sanctions, the FEI Tribunal considered, on the one hand, the doping violation and type of substance involved, and, on the other hand, and in mitigation, the PR's "amateur status" and basic cooperation.

49. According to Article 9 EADMCR, disqualification from the event is automatic when there is a positive finding.

50. 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

51. As a result of the foregoing, the FEI Tribunal disqualifies 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

52. As a consequence of the foregoing, the FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GR and Article 10 EADMCR:

- 1) The PR shall be suspended for a period of ten **(10) months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of ineligibility imposed in this decision.
- 2) The PR is fined **CHF 3.000 -**
- 3) The PR shall contribute **CHF 1.500 -** towards the legal costs of the judicial procedure.
- 4) The PR shall cover the costs of the Confirmatory analysis request in the amount of **CHF 750 -**.

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 Mr Patrick A. Boelens