



DECISION of the FEI TRIBUNAL

dated 14 August 2012

Positive Anti-Doping Case No.: 2011/BS14

Horse: BINGO

FEI Passport No: BEL 102TJ61

Person Responsible/NF/ID: Nikita Taveirne/BEL/10002394

Event/ID: CSI3*, Moorsele (BEL)/2011_CI_1182_S_S

Date: 29 September - 2 October 2011

Prohibited Substance: Morphine (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Pierre Ketterer, Panel Member
Mr. Henrik Arle, Panel 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 PR.

2.3 Oral hearing: 4 July 2012 – Telephone conference

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR: Ms. Nikita Taveirne, PR
Mr. Philippe Levy, Counsel for the PR
Mr. Hervé Taveirne, Witness

For the FEI: Ms. Carolin Fischer, FEI 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 23rd edition, effective 6 May 2011 ("**Statutes**"), Arts. 1.4, 34, 36 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1, 168.4 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012 ("**IRs**").

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 5th 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 Person Responsible: Ms. Nikita Taveirne

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 (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

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. BINGO (the "Horse") participated at the CSI3* in Moorsele,

Belgium, from 29 September to 2 October 2011 (the "Event"), in the discipline of Jumping. The Horse was ridden by Ms. Nikita Taveirne, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").

2. The Horse was selected for sampling on 30 September 2011.
3. Analysis of urine and blood sample no. 5509650 taken from the Horse at the Event was performed at the FEI approved laboratory, the Sport Science Ltd. Laboratory (UK) ("HFL"), by Simon Biddle, Senior Scientist, under the supervision of Steve Maynard, Director. The analysis of the urine sample revealed the presence of Morphine (Certificate of Analysis no. 70926 dated 21 October 2011).
4. The Prohibited Substance detected is Morphine. Morphine is an opiod analgesic, used for pain relief. Morphine is classified as a "Banned Substance" under the Equine Prohibited Substances List. Therefore, the positive finding for Morphine in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

4.2 The Proceedings

5. On 8 November 2011, the FEI Legal Department officially notified the PR, through the Belgian Equestrian Federation ("BEL NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the Consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
6. Upon request by the PR, a Preliminary Hearing took place on 10 November 2011. The PR, represented by veterinarian, Dr. José Landuyt, explained that the Horse was ridden by the PR on a daily basis, and that her father was taking care of the horse and feeding it. The PR further stated that neither her, nor her father had administered any Morphine to the Horse, and that she was investigating whether some feed contamination could have lead to the positive test result.
7. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing Panel.

4.3 The B-Sample Analysis

8. The PR was also informed in the Notification Letter of 8 November 2011 that she was entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or to be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

9. By letter dated 14 November 2011, the PR confirmed that she wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis. The PR also confirmed that she intended to be present at the B-Sample analysis.
10. By email of 16 November 2011, the PR informed the FEI that she had changed her opinion regarding her attendance during the B-Sample analysis, and was no longer requesting to be present.
11. The B-Sample analysis was performed on urine between 8 and 12 December 2011 at the Laboratoire des Courses Hippiques, France ("LCH"), an FEI-accredited laboratory, by Dr. Philippe Plou, Head of Technical Division. The PR did not attend the B-Sample analysis. Therefore, Mr. Patrick Cuvier, Lims Manager of LCH, witnessed the opening and identification of B-Sample no. 5509650. In his witness statement, Mr. Cuvier 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 LCH 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 Counter Analysis no. 5509650 dated 12 December 2011). The results of the B-Sample analysis were notified to the PR on 22 December 2011.

4.4 The Further Proceedings

13. Following the request by the PR to analyse the horse feed (called "Culminar Hobby") at HFL, the Parties agreed on the details for the analysis, in particular that the feed sample(s) had to be sent directly by the manufacturer to HFL. Furthermore, the PR acknowledged that the FEI's failure to object to the analysis did not constitute a waiver of any of its arguments under the applicable rules, and that, irrespective of the outcome of the feed analysis, it did not establish that the PR had discharged her burden under the Equine Anti-Doping Rules.
14. The analysis of the Horse's feed was performed on 16 December 2011 at HFL, by Mr. Karl Woodward, Senior Scientist, under the supervision of Mr. Maynard.
15. The confirmatory feed analysis established the presence of Morphine (Certificate of Analysis no. 71997 dated 16 December 2011).
16. By letter of 6 January 2012 and email of 15 January 2012, the PR waived her right to a hearing. The PR further expressed that she was confident that the FEI Tribunal would take into account the positive feed test results when deciding the case. She furthermore explained that Culminar, the producer of the Morphine positive feed,

had started a second analysis, and that a sample of the same lot of feed also resulted in a positive for Morphine. The PR concluded that the results of the different analyses established the explanation for the positive Morphine finding.

17. On 20 January 2012, the PR informed the FEI that a further analysis would be performed by Culminar, in order to determine which particular component of the feed had caused the positive test result.
18. By email of 1 February 2012, the PR explained that further analysis of the feed had been stopped by Culminar, due to financial reasons. The PR concluded that whereas the feed given to the Horse was positive for Morphine, the particular component of the feed which caused the positive finding remained unknown.
19. On 22 February 2012, the FEI provided its Response to the PR's explanations. In essence, the FEI argued that since the PR had not disputed that Morphine was present in the Sample collected from the Horse at the Event, it had discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
20. That there were no reasons for any elimination or reduction under Article 10.5 of the EAD Rules since the evidence adduced by or on behalf of the PR had not established, by a balance of probability, that the Morphine found in the Horse's sample resulted from contaminated feed, administered to the Horse. The FEI argued in this context that the PR had not adduced any evidence that any contaminated Culminar Hobby feed at all was administered to the Horse. That moreover, no clear evidence had been provided that any Culminar Hobby feed allegedly fed to the Horse came from the same batch as the feed sample tested by HFL. That in this regard the FEI had contacted HFL, which had submitted some documentation received by the manufacturer together with the sample, as well as a picture of the feed sample sent to HFL. That this documentation however was in Dutch and that the sample sent to HFL did not contain any information regarding the batch number. The FEI further highlighted that no official declaration or similar by the feed manufacturer regarding the contamination issue had been submitted. With regard to the question of Fault or Negligence for the rule violation, the FEI took the position that the PR had not provided any explanation or evidence that would allow the assessment of No (or No Significant) Fault or Negligence, as required under Article 10.5 of the EAD Rules for any elimination or reduction of the otherwise applicable period of Ineligibility and sanctions. In conclusion, the FEI requested that a period of Ineligibility of two years should be imposed on the PR in accordance with Article 10.2 of the EAD Rules, without any elimination or reduction. The FEI further requested that in addition to the automatic disqualification of the results at the Competition under Article 9 of the EAD Rules, all results obtained by the PR at the Event together with the Horse should be disqualified, in accordance

with Article 10.1 of the EAD Rules. In addition, the FEI suggested that the PR should provide good reasons as to why the results obtained by her at the Event with two other horses, QUICKLY Z and COURTELLO Z VAN'T WAAIHOF, should not be disqualified, under Article 10.1 of the EAD Rules.

21. Upon request by the PR to lift the Provisional Suspension, a second Preliminary Hearing took place on 24 May 2012. The PR, represented by Dr. Landuyt, relied on the fact that the feed of the Horse had been analysed at HFL, and that the analysis had returned a positive result for Morphine. That the sealed samples of the feed had been sent directly from the manufacturer to HFL. The FEI argued that the PR had not succeeded in establishing how the Prohibited Substance had entered the Horse's system. That to this aim, it was not sufficient to prove contamination of the feed only, but that causality needed to be established between the positive test results from the Horse's feed, and the positive test result of the sample taken from the Horse at the Event. The FEI stressed that these requirements had been clearly established in the FEI Tribunal Decisions in the cases Case 2009/25 – CJS GAI FOREST, Final Tribunal Decision dated 14 September 2010, and Case 2011/BS09 - KARABIL KAIYA HAI, Final Tribunal Decision dated 21 March 2012, but had not been met in the case at hand.
22. The Preliminary Panel, in its decision of 24 May 2012, found no reasons for lifting the Provisional Suspension based on the information provided, and maintained the Provisional Suspension.
23. By letter of 31 May 2012, the PR provided a witness statement by Mr. Hervé Taveirne, father of the PR. Mr. Taveirne testified that he was responsible for feeding the Horse and all other horses in the training centre of the PR. That for the last five years, only feed from the manufacturer Culminar had been bought by him, and that the Horse was fed 3 kg of "Culminar Hobby" in the morning and in the evening.
24. By letter of 21 June 2012, the PR, now represented by Mr. Philippe Levy, Legal Counsel, requested that the Provisional Suspension be lifted, and also requested a Final Hearing.
25. By submission of 3 July 2012, the PR contended that she had provided proof that the contaminated Culminar feed had lead to the positive test result, that Morphine was not listed as an ingredient on the label of the feed, and that therefore she was not at fault. That in light of this, a period of Provisional Suspension of eight (8) months would be unfair. The PR requested that the Provisional Suspension be immediately lifted, and that no period of Ineligibility, or in the alternative, a period of Ineligibility of no more than two (2) months should be imposed on her. In this context, the PR provided a copy of an interview with Mr. Rodrigo Pessoa, rider and former President of the International Jumping Rider Club (IJRC), commenting on two recent decisions by the Court of Arbitration for Sport (CAS) in the

cases of two riders from the Kingdom of Saudi Arabia, Mr. Khaled Abdulaziz Al Eid and Mr. Abdullah Waleed Sharbatly. The PR argued that the CAS had reduced the period of suspension for those two riders from eight (8) months – imposed by the FEI Tribunal – to two (2) months, and that therefore, a similarly low period of Suspension should be imposed on her too.

26. The Final Hearing took place on 4 July 2012. During the Final Hearing, both Parties referred to their written submissions. Further, the PR explained that she currently rode eight (8) horses, all of them stabled in her private training centre. That all her horses were fed Culminar, for approximately the last five (5) years since the Culminar company was established. That the Event was part of a four (4) week show, and that she had brought five horses to the show. That first she herself, and later her father had brought Culminar feed from her training centre to the show, for the horses. Upon request by the Tribunal, Mr. Taveirne confirmed his written statement. In conclusion, the PR argued that she had established that the Horse had been fed contaminated Culminar feed in the period leading to the Event, and that moreover, she had sufficiently established the link between the contaminated feed and the positive test result. That it would be an unreasonable burden on riders to request to provide proof of feed given to their horses on a daily basis. Conversely, the FEI argued that it was not unreasonable for riders to keep a clear record of feed given to horses. That – as determined in the cases of CJS GAI FOREST and KARABIL KAIYA HAI, in order to establish that contamination had lead to the positive test result, it was not sufficient to adduce evidence demonstrating the contamination of the feed only, but that it was also necessary to establish the link between the contaminated feed, and the positive test result. That the documents provided by the PR in an attempt to establish that link – a production sheet by the manufacturer of the feed, an invoice by the manufacturer and the statement by Mr. Taveirne of 31 May 2012 – were not sufficient proof of the link between the contamination and the positive test result.

27. As regards the question of Fault or Negligence for the rule violation, the PR testified that neither she, nor her father had conducted any research on the Culminar company or its products, and that she had no information on whether the feed was certified free of Prohibited Substances. That apart from generally consulting her Veterinarian prior to any medications, she had not taken any precautions to avoid the horses coming in contact with Prohibited Substances. That since she owned the Horse – i.e. since three (3) years – it had never been treated by any Veterinarian or herself, as it was very healthy. When questioned, the PR stated that she did not know the FEI EADCM Regulations and that she had heard about the FEI Athletes Guide, but had not read it. That while there was some information available on the website of her National Federation on anti-doping, her National Federation had not provided her with any anti-doping education. The PR further explained that

she had been tested once before as a junior at an international competition. When questioned, the PR confirmed that in 2007, she had been previously suspended for a period of three (3) months, with a probation period of one year, following a positive test of her horse "BAD INTENTION" for Phenylbutazone and Oxyphenbutazone, at a National Competition. In this context, the PR argued that other decisions involving Morphine, taken on a national level in Belgium and published on the same website as the decision involving herself, should be taken into consideration, particularly since the same Prohibited Substance had been detected. The FEI argued that given the PR's testimony, the Tribunal should come to the conclusion that she had acted negligently, and that therefore, there was no basis for any elimination or reduction of the otherwise applicable sanctions. Regarding the other national cases involving Morphine, the FEI took the position that since no details of these cases were known, there was no basis to compare them with the case at hand.

4.5 Jurisdiction

28. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

4.6 The Person Responsible

29. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she was the rider of the Horse at the Event.

4.7 The Decision

30. 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 both HFL and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Morphine 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. Morphine is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

31. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 2.1 and 3.1 of the EAD Rules. This is undisputed between the Parties.

32. It is to be noted here that the decisions by the CAS in the cases of Mr. Al Eid and Mr. Sharbatly, referred to by the PR, are not relevant for the case at hand insofar as in those cases, Controlled Medication Substances had been detected, and as for those types of substances, an entirely different range of sanctions applies.

33. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, the PR has the burden of proving that she bears "No Fault or Negligence" for the positive findings as set forth in Article 10.5.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.5 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability". In line with its previous decisions (FEI Case 2009/25 – CJS GAI FOREST, Final Tribunal Decision dated 14 September 2010, and FEI Case 2011/BS09 KARABIL KAIYA HAI, Final Decision dated 21 March 2012) the Tribunal determines that in cases of positive findings allegedly caused by contaminated feed, it is not sufficient to prove contamination of the feed only. In addition, a link between the contaminated feed and the positive test result of the Horse's sample needs to be established, in order to eliminate or reduce sanctions under Article 10.5 of the EAD Rules. The Tribunal takes note of the documents provided by the PR in this context, and of Mr. Taveirne's explanation that the Horse had been fed 3kg of Culminar Hobby in the morning and in the evening. However, from these documents and the explanation only it is not possible for the Tribunal to determine whether any Culminar Hobby administered to the Horse came from the same batch as the feed sample tested by HFL. It is therefore not possible for the Tribunal to determine whether the positive Morphine result was indeed caused by contaminated feed, and the Tribunal therefore finds that the PR did not establish how the Morphine entered the Horse's system.

34. Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2.

35. However, even if the Tribunal accepted that the PR had established how the Morphine had entered the Horse's system, the Tribunal finds that the PR does not succeed in taking the second step to reduce the otherwise applicable sanctions, i.e. to establish that she bears No (Significant) Fault or Negligence for the rule violation. To the contrary, the Tribunal finds that the PR was negligent as she did not familiarise herself with the EADCMRs – not even in light of her previous anti-doping rule violation. It was also negligent of the PR to fail to inform herself of the feed products administered to her horses, and not to undertake any precautions - other than consulting her Veterinarian when needed - to ensure that no Prohibited Substances came to be present in the Horse's system. As regards to the PR's earlier violation during a national competition, the Tribunal finds that whereas this prior

violation is not to be counted as a "first violation" under the EADCMRs, it does however show that the PR already at the time had not been familiar with the applicable rules, and apparently has not learned any lesson from that earlier experience. The Tribunal therefore decides that no elimination or reduction of the otherwise applicable sanctions is warranted.

a. Disqualification

36. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.

b. Sanctions

37. Under the EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period for first time offenders. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 8 November 2011, the date of Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 7 November 2013.
- 2) The PR is fined **CHF 1'000**.
- 3) The PR shall contribute **CHF 1'000** towards the legal costs of the judicial procedure, as well as **EUR 550** as costs of the B-Sample analysis.

38. No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organization (Article 10.10.1 of the EAD Rules). Under Article 10.10.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

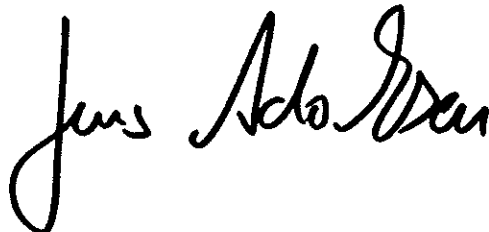
39. According to Article 168.4 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.

40. In accordance with Article 12 of the EAD Rules, the PR and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

c. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, reading "Jens Adolphsen". The signature is written in a cursive, flowing style.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen