



DECISION of the FEI TRIBUNAL

dated 14 September 2010

Positive Doping Case No.: 2009/14

Horse: BMC SARINA

FEI Passport No: NED 40682

Person Responsible: Jürgen Stenfert

Event: CSI4*-W 's-Hertogenbosch, NED

Prohibited Substances: Reserpine

1. COMPOSITION OF PANEL

Mr Pierre Ketterer
Mr Ken E. Lalo
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, as well as the evidence and arguments presented during and following the oral hearing.

2.3 Oral hearing: 26 May 2010 - Geneva.

Present:

For the PR: Mr Jürgen Stenfert, PR
Mr. Abraham de Feijter, Counsel for the PR

For the FEI: Ms Lisa F. Lazarus, General 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, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GR**").

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: Jürgen Stenfert

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. BMC SARINA (the "**Horse**") participated at CSI4*-W 's-Hertogenbosch, in the Netherlands (NED), from 19 to 22 March 2009 (the "**Event**") in the discipline of Jumping. The Horse was ridden by Jürgen Stenfert, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 21 March 2009.

3. Analysis of the blood sample no. FEI-0088724 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**"), by Ms. Murielle Jaubert, Senior Analyst, under the supervision of Dr. Philippe Plou, Chef of the Laboratory. The analysis revealed the presence of Reserpine (Certificate of Analysis dated 7 April 2009).
4. The Prohibited Substance detected is Reserpine. Reserpine is an alkaloid and anti-hypertensive drug used to treat chronic psychoses in humans and is also a long acting sedative. Reserpine has cumulative and long-lasting effects as it acts on the nervous system. Reserpine falls in the category of Doping Prohibited Substances under the EADMCRs and consequently its use gives rise to an *Anti-Doping* rule violation.
5. No request had been made to administer Reserpine to the Horse, and no medication form had been submitted for this substance.

4.2 The Proceedings

6. The presence of the Prohibited Substance as evidenced by the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 17 April 2009.
7. 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.
8. A Preliminary Hearing took place on 23 April 2009 by conference call. Prior to the Preliminary Hearing, the PR, through his counsel, submitted statements by Dr. Michel Heyvaert, a veterinarian, and Amanda Hay, his groom, according to whom the Horse had been administered 1cc of Domosedan, six days prior to the competition, in order to calm him prior to clipping, but had not been administered the detected Prohibited Substance. Following the Preliminary Hearing, the Preliminary Suspension was maintained.
9. On 29 April 2009, the PR requested various documentation and information with regard to the A-Sample analysis. The FEI replied to the request on 6 May 2009, providing information with respect to the A and B-Sample analysis.

4.3 The B-Sample Analysis

10. Together with the Notification Letter of 17 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 also informed of his right to attend or be represented at the

identification and opening of the B-Sample.

11. The PR confirmed on 23 April 2009 that he wished for the B-Sample analysis to be performed.
12. The B-Sample Analysis was performed on the blood sample on 12 May 2009 at the LCH by Jean Guineton, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director of LCH.
13. The PR sent Dr. Peter F. Cronau as his representative to witness the opening and identification of B-Sample no. 0088724.
14. In his witness statement, Dr. Cronau 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 11 May 2009). On 19 May 2009, Dr. Bonnaire submitted a statement explaining that, after the completion of the B-Sample analysis, he had realized that Dr. Cronau's witness statement wrongly mentioned 11 May 2010 as the date of analysis. Dr. Bonnaire confirmed that the analysis actually took place on 12 May 2009. Dr. Cronau has not disputed that assertion regarding the date of analysis.
15. The B-Sample Analysis of the blood confirmed the presence of Reserpine (B-Sample Analysis Report dated 12 May 2009).
16. The results of the B-Sample Analysis were notified to the PR on 26 May 2009 through the Royal Dutch Equestrian Federation (NED).

4.4 The Further Proceedings

17. On 15 June 2009, the PR submitted his written explanations. He explained that according to his investigations, one of the students working temporarily at the stables since February 2009, Mr. Milton Miguel Da Silva Agostinho from Portugal, who was not working as an employee for the PR, had deliberately administered Rakeline, a product containing Reserpine, to the Horse.
18. Together with his explanation, the PR submitted a statement by Mr. Agostinho, given 29 May 2009 under oath before a civil law notary in Arnhem, The Netherlands. In his statement Mr. Agostinho explained having administered, on 17 March 2009, approximately 4 milliliters of the product Rakeline to the Horse. Since Mr. Agostinho's father was a veterinarian, he knew that the product would calm the Horse, and that he had deliberately chosen the product since he knew that the Horse had a calm nature, and that by further calming the Horse through the administration of Rakeline, the performance of the Horse at the

upcoming competitions would be diminished. He had chosen this action because he felt he had been treated too harshly by the PR during his work at the yards of the PR. The PR had, on several occasions, humiliated him, sometimes in front of others, criticized his riding abilities and talent. Mr. Agostinho therefore felt "*mistreated and offended*".

19. The PR, in this context, further stated that he had reported the incident to the local police, who had in turn initiated an investigation. Further, that Mr. Agostinho was questioned extensively by the police and ultimately gave a "full confession" to the police.
20. The PR further submitted a statement by Dr. Nas, the PR's veterinarian, dated 19 May 2009. Dr. Nas explained that he had prescribed Rakeline for a different horse of the PR, and that the bottle of Rakeline was kept behind closed doors at the stable of the PR.
21. Further, and in support of his allegation that the Horse has a calm demeanor in the jumping arena, the PR submitted a statement by Dr. Cronau. According to Dr. Cronau, in a nutshell, the use of the product Rakeline on a horse with a naturally calm demeanor was counterproductive and could potentially result in consequences and side effects, which could ultimately endanger both horse and rider.
22. In response to the expert statement by Dr. Cronau, on 20 June 2009, the FEI submitted a statement by Dr. Andrew Higgins, Member of the FEI Veterinary Committee. Dr. Higgins concurred with Dr. Cronau on the calming effect of Reserpine, but disagreed with Dr. Cronau's statement on the counterproductive effect of Reserpine on the Horse. Dr. Higgins also pointed out that there is no legitimate use for Reserpine in a performance horse.
23. Following the submissions of the PR, a Second Preliminary Hearing took place upon request by the PR. In the following, the Preliminary Hearing the Panel member lifted the Provisional Suspension, reasoning that the PR had already been provisionally suspended for two (2) months and that based on the PR's explanations, the elimination or reduction of the applicable period of suspension could not be excluded.
24. On 29 January 2010, the FEI submitted its response to the explanations by the PR. The FEI argued that under the FEI Equine Anti-Doping and Medication Control Rules, it is irrelevant whether or not the administration of a Prohibited Substance in a particular case had a productive or a counterproductive effect on the Horse, or whether or not the Prohibited Substance had any performance enhancing effect on the Horse. To support its argument, the FEI relied on the definition of Doping Prohibited Substances under the FEI Equine Prohibited Substances List,

according to which Doping substances are

"Agents, cocktails or mixtures of substances that may affect the performance of a horse".

25. The FEI concluded that the Prohibited Substances which are classified as *Doping* Prohibited Substances only need to potentially affect the performance of the horse. The FEI further argued that the question whether or not the PR has proven that the administration of Reserpine has been counterproductive or productive for the performance of the Horse may only be taken into account to evaluate the credibility of the PR's explanation of how the Prohibited Substance has entered the Horse's system, i.e. that the substance had been administered to the Horse in order to diminish the performance of the Horse. Further, that it is illegal for individuals to store Rakeline at home or in the stables, and that, despite a considerable amount of time having passed since the PR had submitted his explanations, he had not yet reported to the FEI and to the Tribunal the outcome of the alleged police investigation.
26. With respect to the question of fault and negligence for the rule violation under EADMC Rules Article 10.5, the FEI argued that the PR's lack of control over who had access to the key where the bottle of Rakeline was being stored was highly negligent insofar as a trainee student without any veterinary background succeeded in finding and using the key to get access to the Rakeline. The FEI further argued that the incident involving Mr. Agostinho by itself demonstrated that the stable management was deficient. The FEI contended that the PR has acted negligently in performing his duties as competitor and Person Responsible.
27. On 26 March 2010, the PR responded to the FEI's submissions of 29 January 2010. Together with its submissions, the PR submitted a communication of Central Justitieel Incasso Bureau to Mr. Agostinho. In this communication, Mr. Agostinho was told that he was suspected of a criminal act and offered the possibility of finalizing the case by paying a fine of EUR 1,000. The penal fact was described as "*to have available/administering animal medicine Rakeline*", and the period of act indicated as "March 2009". Mr. Agostinho was further informed that in case of non-payment, he would be required to appear in court, and that the District Attorney would ask for a more severe penalty. On 18 May 2010, the PR further submitted a letter by the District Attorney. According to that letter, Mr. Agostinho had not paid the amount of EUR 1,000 and was therefore summoned to appear in court.
28. On 26 May 2010, the Final Hearing took place. The PR, represented by counsel, as well as the FEI had the opportunity to present their respective cases. Mr Agostinho was not presented

as a witness because the PR's lawyer had not succeeded in tracing and contacting him. During the Final Hearing, the PR reported that following the non-payment of the fine by Mr. Agostinho, a hearing was scheduled to take place on 12 July 2010 before the Netherlands courts.

29. Following request by the Tribunal of 4 August 2010 regarding the outcome of the court proceedings in the Netherlands, the PR, through his counsel, informed the Tribunal that Mr. Agostinho had been imposed a fine in the amount of 1,000 EUR by the court. Following further request by the Tribunal, the PR explained that as further outcome of the Court procedure, Dr. Nas had been invited to pay the amount of 4,000 EUR, for leaving Rakeline at the PR's premises, and the private partnership 'v.o.f. Stal Stenfert', formed by the PR and the PR's brother, the amount of 2,000 EUR, for having Rakeline available at their stable.

4.5 Jurisdiction

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

4.6 The Person Responsible

31. 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

32. The Tribunal is satisfied that the laboratory reports relating to the A- and B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LCH are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Reserpine, which is a Prohibited Substance, in the samples taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.
33. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substance found in the samples is classified as a "Doping" Prohibited Substance.
34. In Doping and Medication cases, a strict liability principle applies as described in Article 2.1.1 of the EADMCRs. Once 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 of the EADMCRs, or "No

Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.

35. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must first establish how the Prohibited Substance entered the Horse's body. Under Article 3.1 of the EADMCRs, this is to be established by the PR by "*a balance of probability*"

("Where these Rules place the burden of proof upon the Person Responsible alleged to have committed an anti-doping or medication control rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability").

36. The Tribunal finds that the cumulative effect of all the evidence in this case is sufficient for the PR to establish by a balance of probabilities that the Prohibited Substance entered the Horse's body by the trainee, Mr. Agostinho, who injected it without the PR's knowledge. In particular, the Tribunal is of the opinion that the statement under oath by the PR's trainee, the PR's testimony in the course of the Final Hearing, as well as the judgement rendered by the Economical Police Judge in Arnhem, according to which "*Mr. Agostinho has been convicted for having available/administering animal medicine Rakelin on 1 March at De Steeg*" and consequently was imposed a fine of 1,000 EUR, are convincing evidence of this fact. In light of the above, the Tribunal thus accepts that the substance entered the Horse's system through the administration by the PR's groom of the product Rakeline.
37. With regard to the question of fault or negligence, the Tribunal finds that the PR was negligent insofar as the trainee who was working only temporarily and was not well-known to the PR had access to a Prohibited Substance. Athletes must ensure that products containing Prohibited Substances (even if authorised) are treated as extremely dangerous products, as these may result in positive samples with all the negative consequences that follow. All such products have to be stored separately and secured, with exclusive access for those persons having the right and the knowledge to properly administer them.
38. The Tribunal has repeatedly expressed the view that athletes have to establish and maintain excellent stable management, which is of paramount importance in order to ensure the respect of the applicable rules and horse welfare. Proper stable management includes proper management of the athlete's staff, be it grooms, trainees, veterinarians or other support personnel.
39. Notwithstanding the above, the Tribunal finds that the PR was not significantly negligent since this was a case of true sabotage where someone acted without the PR's consent and with the

intent to harm him. Therefore, a reduction in sanctions under 10.5.2 is appropriate.

40. The Tribunal considers that the storage of a product which is apparently illegal under Dutch Law and the decision of the Dutch Court which has established that the private partnership formed by the PR and the PR's brother has committed a criminal infringement constitute aggravating circumstances which have to be taken into account in deciding the sanctions.
41. In mitigation, the Tribunal deems it necessary to take into consideration the significant delay between the notification of the case to the PR and the date at which the case has been forwarded to the Tribunal. While the Tribunal acknowledges the necessary and legitimate steps that have been taken by the FEI to prosecute the case, the FEI should have proceeded more promptly as the PR had to continue his career during a lengthy period in which proceedings were pending with all the consequences associated with such proceedings. On the other hand, it has been of importance for the Tribunal's decision to receive the outcome of the police investigations in this rather unusual case.
42. Accordingly, the Tribunal finds that a violation of EADMCR Article 2.1 occurred, but that the PR is entitled to a reduction of the sanctions under EADMCR Article 10.5.2 as set forth above.
43. According to Article 9 EADMCR, disqualification from the Events is automatic when there is a positive finding.
44. 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

45. For the reasons set forth above, the 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

46. The Tribunal decides 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 **four (4) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 17

April 2009 to 24 June 2009, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI Events through **4 November 2010**.

- 2) The PR is fined **CHF 1,000.-**.
- 3) The PR shall contribute **CHF 750-** 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

A handwritten signature in black ink, appearing to read 'Pierre Ketterer', is enclosed within a large, irregular oval scribble.

THE CHAIRMAN Pierre Ketterer