



## **DECISION of the FEI TRIBUNAL**

**dated 3 October 2011**

**Positive Anti-Doping Case No.:** 2010/15

**Horse:** EURAMAN KARA CO BAR

**FEI Passport No:** AUS02035

**Person Responsible:** Abdul Kader Abdul Sattar/UAE

**Event:** CEI1\* 80km, Dubai, UAE

**Prohibited Substance:** Testosterone (Banned Substance)

### **1. COMPOSITION OF PANEL**

Mr. Ken E. Lalo, Chair  
Dr. Alberto Hernan Mendez Cañas, 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, as also made available by and to the PR.

**2.3 Oral hearing:** none

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, 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 ("**EADCM Regulations**"), 1<sup>st</sup> edition, effective 5 April 2010.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1<sup>st</sup> edition, effective 5 April 2010.

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5<sup>th</sup> April 2010, 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:** Abdul Kader Abdul Sattar

### **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. EURAMAN KARA CO BAR (the "Horse") participated at the CEI1\* 80km in Dubai (UAE) on 20 November 2010 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Abdul Kader Abdul Sattar, who is the Person Responsible in accordance with GRs Article 118 (the "PR").
2. The Horse was selected for sampling on 20 November 2010.
3. Analysis of the urine sample no. FEI-5501943 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Colton Ho Fai Wong, Chemist, under the supervision of Terence See Ming

WAN, Chief Racing Chemist (Head of Racing Laboratory). The analysis revealed the presence of Testosterone at a concentration of 0.0276 microgram per millilitre (Test Report dated 3 December 2010).

4. The Prohibited Substance detected is Testosterone. Testosterone is an anabolic steroid and sex hormone which increases weight gain, energy levels and muscle mass. Testosterone may potentially be endogenously produced by male horses. The FEI has therefore implemented a threshold concentration in its anti-doping policy for Testosterone that is specific to geldings. The threshold concentration in urine for geldings is 0.02 micrograms (20 ng) of free and conjugated Testosterone per ml. Testosterone – provided it is detected in a gelding's *Sample* at a level above the threshold - is classified as a *Banned Substance* under the *FEI Equine Prohibited Substances List*.

#### **4.2 The Proceedings**

5. By letter dated 22 December 2010, the FEI informed the PR of the positive finding for Testosterone above the threshold and invited him to officially inform the FEI of the gender of the Horse and – if applicable – the date of castration and the name of the veterinarian who had performed the castration.
6. By email to the FEI of 30 December 2010, the United Arab Emirates Equestrian & Racing Federation ("UAE-NF") provided an email from the Veterinarian of the Horse's stable, Dr. Sidi Sefiane. Dr. Sefiane explained that the Horse had always been a gelding since it was purchased years ago, and that no Testosterone had been used in the stable's clinic.
7. On 3 January 2011, the FEI wrote to the UAE-NF stating that an official explanation was required in response to the Letter of 22 December 2010, including the signature of the person providing the statement and any supporting evidence.
8. In the absence of a response, on 3 February 2011, the FEI again emailed the UAE-NF, inquiring whether any formal submission could be expected following the letters of 22 December 2010 and 3 January 2011.
9. By email of 16 February 2011, the UAE-NF submitted a joint statement of Dr. Sefiane and the PR. The veterinarian and the PR together explained that internal investigations had been started to determine the causes of the positive test result.
10. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal

Department on 21 February 2011. In the Notification Letter, the FEI Legal Department explained that no explanation or evidence had been provided to demonstrate the possibility that the positive test result had been caused – despite the Horse’s castration – by endogenous production of the Horse. That accordingly, the positive finding for Testosterone gave rise to an Anti-Doping Rule violation under the EAD Rules. The Notification Letter further included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a preliminary hearing before the FEI Tribunal.

11. The PR did not request a Preliminary Hearing.

### **4.3 The B-Sample Analysis**

12. Together with the Notification Letter of 21 February 2011, 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 B-Sample analysis, and to request that the B-Sample be analysed in a different laboratory than the A-Sample.
13. The PR confirmed on 23 February 2011 that he wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
14. The B-Sample analysis was performed on urine from 13 to 16 March 2011 2010 at the Australian Racing Forensic Laboratory (“ARFL”), a FEI-accredited laboratory, under the supervision of Mr. John Keledjian, Operation Director.
15. The PR did not attend the B-Sample analysis and did not request for a specific representative to be present during the analysis. In fact, the PR indicated that the “FEI can choose witness” on the B Sample request form. Therefore, Ms. Nicole Luise Hudson, Team Leader at the ARFL, witnessed the opening and identification of B-Sample no. 5501943.
16. In her witness statement, Ms. Hudson 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 Racing NSW – Australia, Racing Forensic Laboratory corresponds to that appearing on the collection documentation accompanying the sample”.
17. The B-Sample Analysis of the urine confirmed the presence of Testosterone at a concentration of 0.023 microgram per millilitre (Testosterone Quantitation Report dated 16 March 2011).

18. The results of the B-Sample Analysis were notified to the PR on 11 April 2011 through the UAE-NF.

#### **4.4 The Further Proceedings**

19. By email of 13 April 2011, the UAE-NF explained that no further explanations or evidence would be provided. The email also contained a statement by Mr. Taleb Dhaher al Muhairi, Secretary General of the UAE-NF, explaining that the PR had no further explanation or evidence to submit.
20. By email of 13 April 2011, the FEI responded that insofar as the PR would be the person upon whom sanctions would be imposed, he would need to waive his right to provide further explanations.
21. On 17 April 2011, the UAE-NF submitted a statement, signed by the PR, in which he explained that he does not have any further explanation or evidence to submit.

#### **4.5 Jurisdiction**

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

#### **4.6 The Person Responsible**

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

#### **4.7 The Decision**

24. 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 the HKJC and the ARFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone above the international threshold 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. Testosterone – provided it is detected in a gelding's Sample at a level above the threshold - is classified as a Banned Substance under the FEI Equine Prohibited Substances List.
25. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3. The Tribunal notes that the "preliminary" examination of the Horse as offered by the FEI to the PR prior to the official notification of the positive case, is not obligatory under the FEI rules. Only in cases of an "Atypical Finding", as defined in EAD Rules Article 7.2, is the FEI obliged to conduct "further investigations", whereas in this case, no

investigations would have been necessary. However, the Tribunal acknowledges that the FEI proceeded here with an abundance of caution given that this case was one of the first under the new EAD Rules and that such caution was for the benefit of the PR.

26. In Doping and Medication cases, a strict liability principle applies as described in EAD Rules Article 2.1.1. 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 EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2.
27. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. With regard to the standard of proof to be met by the PR, EAD Rules Article 3.1, second sentence, stipulates that the PR has to establish "specified facts or circumstances" "by a balance of probability".
28. In this context, the Tribunal takes note that the PR did not report back about the internal investigations that had allegedly been launched, and did not provide any other explanation or evidence regarding the source of the Prohibited Substance. The Tribunal therefore holds that the PR has not established by a "balance of probability" how the Prohibited Substance entered the Horse's system.
29. Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2 should be applied.
30. According to EAD Rules Article 9, a violation of the EAD Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.
31. According to GRs Article 168.4, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

32. 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 at the Event must be forfeited, in accordance with EAD Rules Article 9.

#### 4.9 Sanctions

33. Under the currently applicable EAD Rules, 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 PR, in accordance with Article 169 GRs and EAD Rules Article 10:

- 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 21 February 2011 to the date of this decision as stated on its caption, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 20 February 2013.
- 2) The PR is fined **CHF 1,000.**
- 3) The PR shall contribute **CHF 1,500** towards the legal costs of the judicial procedure, as well as **CHF 1,000** for the cost of the B-Sample analysis.

#### 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



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THE CHAIRMAN, Ken E. Lalo