

DECISION of the FEI TRIBUNAL

Dated 30 July 2012

Positive Anti-Doping Case No.: 2011/BS17

Horse: MOUSE

FEI Passport No: GBR41054

Person Responsible: Pietro Sandei

Event: CIC3*, Cameri, Novara (ITA); 21-23 October 2011

Prohibited Substance: Morphine (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Pierre Ketterer, member
Mr. Henrik Arle, 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 hearing, as also made available by and to the PR.

2.3 Oral hearing: On 2 May 2012 – FEI Headquarters Lausanne

Present: The FEI Tribunal Panel
Ms. Erika O'Leary, FEI Tribunal Clerk

For the PR: Mr. Pietro Sandei, PR
Ms. Susanna Gaiotto, Counsel for the PR
Dr. Marco Montana, Veterinarian
Mr. Luigi Sandei, Father of the PR
Mrs. Michele Sementilli, Mother of the PR
Ms. Paola Biass-Malucelli, Interpreter

For the FEI: Ms. Lisa 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 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 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, effective 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 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 Person Responsible: Pietro Sandei

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. MOUSE (the "Horse") participated at the CIC3* in Cameri, Novara, Italy from 21 to 23 October 2011 (the "Event"), in the discipline of Eventing. The Horse was ridden by Mr. Pietro Sandei, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
2. The Horse was selected for sampling on 23 October 2011.
3. Analysis of the urine sample 0167622 taken from the Horse at the Event was performed at the FEI approved Horseracing Forensic Laboratory, HFL Sport Science, Newmarket Road, Cambridgeshire, UK ("HFL"), by Dr. R Schiller, Senior Scientist, under the supervision of Dr. S Hudson, Principal Scientist. The analysis of the urine sample revealed the presence of Morphine.
4. The Prohibited Substance detected is Morphine. Morphine is an opiate analgesic, used for pain relief and as a cough suppressant. It is classified as a Banned Substance under the FEI 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 FEI EADCMRs.

4.2 The Proceedings

5. 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 November 2011, through the Italian Equestrian Federation ("ITA-NF"). The Notification Letter included notice that the PR was provisionally suspended as of that date and granted him 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 2 December 2011. During the Preliminary Hearing, the PR explained that the Horse had not received any treatment prior to the Event, and denied any deliberate administration. The PR stated that he had no explanation for presence of the Morphine in the Horse's system. Following the Preliminary Hearing, the Provisional Suspension was maintained.

4.3 The B-Sample Analysis and the further proceedings

7. Together with the Notification Letter of 21 November 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.

8. The PR confirmed on 28 November 2011 that he wished for the B-Sample analysis to be performed. The PR did not request for the analysis of the B-Sample to take place in a different laboratory than the A-Sample analysis. The PR requested that three representatives attended the B-Sample analysis.

9. By letters submitted between 29 November 2011 and 2 December 2011, the PR further requested that the B-Sample analysis be carried out on a quantitative basis. In this context, the PR explained that the use of Morphine in Italy was a criminal offence which would result in criminal proceedings and a possible indictment. That for the purpose of defending his position, both before the FEI Tribunal and in subsequent proceedings in front of a national Italian Court, he required evidence that only trace amounts of Morphine had been found in the Horse's Sample. The PR further requested that a portion of the B-Sample be kept and properly resealed for the potential proceedings in front of the Italian criminal courts, and that the blood portion of the B-Sample be analysed. With regards to the potential procedure in Italy, the PR cited various articles of the Italian Criminal Procedure Code and Italian jurisdiction, claiming that as a defendant in criminal proceedings in Italy, he was entitled to carry out investigations, in order to amass evidence in support of his case. The PR also raised doubts as to whether the positive urine A-Sample belonged to the Horse. In this context, the PR referred to the Horse's passport, claiming that in that document, only the taking of blood had been entered. The PR therefore requested that a DNA analysis be performed on the Horse's hair, in order to confirm that the positive urine sample indeed emanated from the Horse. Lastly, the PR submitted that he was enrolled in the equitation section of the 'Fiamme Oro' training course for Inspectors of the Italian State Police Corps. That for participants of that course, participation in equestrian competitions was mandatory, and that therefore any Provisional Suspension would endanger his training contract.

10. On 6 December 2011, the FEI responded to the requests by the PR. Regarding the request for a quantitative analysis, the FEI stressed that the Prohibited Substance detected was not classified as a Threshold Substance under the EADCMRs and the VRs, and that therefore, the levels detected were irrelevant, and that it was not necessary for either the A-Sample analysis or the B-Sample analysis to indicate the concentration of the substance. Based on those grounds, the FEI rejected the request for the quantitative analysis. The FEI further confirmed that HFL would keep a duly resealed portion of the B-Sample, should any further analysis be requested by an Italian Court. With regards to the DNA test, the FEI generally agreed to perform such a test, underlining that as a comparative, both a new blood sample and a urine sample would have to be taken from the Horse.

11. On 2 and 7 January 2012, the PR further addressed his request for a quantitative analysis of the B-Sample. The PR noted that upon examination of the A-Sample data pack by his experts, Dr. Montana of the University of Veterinary Medicine of Milan and Prof. Silvano Carli ("the

Experts”), it had been determined that the concentration of Morphine detected was of a minimal concentration. That, with reference to the spiked sample (urine Sample with the intentional addition of the Morphine), the Experts had calculated the concentration of Morphine in the Horse’s Sample to be in the range of 70 - 90 ng/ml. The PR further submitted that the alimentary origin of Morphine is commonly reported in international literature, and that in light of the low concentration detected in the Horse’s sample, there was a “concrete possibility” that the Morphine had been ingested by the Horse as a result of food contamination. Referring to the English High Court case of William P Mullins –v- Nigel McFarlane and the Jockey Club (Queen’s Bench Division No. 05/TLQ/1305), the PR submitted that the screening limits applied to Morphine have gradually risen over time, from 10 ng/ml to 50 ng/ml. Together with his submissions, the PR requested for a Second Preliminary Hearing to take place.

12. On 11 January 2012, the FEI communicated to the PR that the Preliminary Hearing panel, following review of the PR’s submissions, had determined that it was not sufficient to argue the probability of contamination, and that therefore, the conditions for a Second Preliminary Hearing under Article 7.4.3 (i) and (ii) of the EAD Rules are not met. That therefore, the request for a Second Preliminary Hearing was rejected, but that the issue might be reconsidered following receipt of the test results by Dr. Montana and Prof. Carli. The FEI further clarified that the level of Morphine in the sample was irrelevant, but invited the PR to provide the results, in order to be in a position to duly address the issue.

13. By letter dated 22 January 2012, the PR contended that Morphine fell within the category of Banned Substances under the FEI Prohibited List, and that whereas there was no official threshold for Morphine, a certain “cut-off” would be applied by the FEI laboratories, leading to the fact that the “zero tolerance” concept would not be applied to Morphine. Furthermore, that the screening limits employed by the FEI for Morphine could be arbitrarily modified by FEI accredited laboratories, on a case by case basis. The PR further claimed that his case was comparable to the FEI case of ABC CRI CRI, Final Tribunal Decision dated 7 March 2008, in which feed had been held to be the source of the positive Morphine test result.

14. On 26 January 2012, and following request by the PR, the FEI confirmed that the B-Sample analysis would be carried out on a qualitative basis only, that no analysis would be carried out on the blood portion of the B-Sample and that the sample would not be tested for other opiate alkaloids.

15. By email dated 27 January 2012, the PR withdrew this request to be represented during the B-Sample analysis. The PR stated that given the fact that his requests regarding the B-Sample analysis had been rejected, there was nothing for him or his representatives to observe during the analysis.

16. On 31 January 2012, the PR submitted the report by Dr. Montana and Prof. Carli, referred to in his earlier submission. In a nutshell, the Experts stated that according to international literature, forage normally used for horses contained plants which itself contained opiate alkaloids such as Morphine. That furthermore, Morphine positives originating from feed would never exceed a concentration of 100 ng/ml, as opposed to Morphine positives resulting from Morphine administered for therapeutic purposes, for which concentrations exceed 500 ng/ml. That according to the literature and the British, Irish and French manufacturing trade bodies for equine feed, it was impossible to eliminate the presence of Naturally Occurring Prohibited Substances "NOPS", amongst them Morphine, and that it was only possible to reduce the respective risk. The Experts further stated that according to their calculations on the A-Sample Data Pack, the exact estimated concentration of Morphine in the Horse's sample was 81.8 ng/ml. Referring to the so-called 'Toutain Model', a model allegedly developed in order to determine concentrations of substances which would allow drawing conclusions as to the cause of the positive being contamination, the Experts claimed that the concentration of Morphine compatible with inadvertent administration was in the region of 40ng/ml – 200ng/ml. Lastly, that a concentration of 40ng/ml – 200ng/ml was incompatible with a deliberate administration for pharmacological reasons.

17. The B-Sample analysis was performed on the urine from 1 to 2 February 2012 at HFL by Ms. Selina Hines under the supervision of Mr. Maynard, Director of HFL.

18. The B-Sample analysis of the urine confirmed the presence of Morphine. The results of the B-Sample analysis were notified to the PR on 13 February 2012, through the ITA-NF.

4.4 The Second Preliminary Hearing

19. On 1 February 2012, the FEI submitted its Response to the request for the Second Preliminary Hearing. Together with the Response, the FEI submitted a statement by Ms. Victoria Unt, MRCVS, Advisor with the FEI Veterinary Department. In her statement, Ms. Unt affirmed that Morphine was a Banned Prohibited Substance under the FEI Prohibited List, and that no threshold applied to Morphine. That further, FEI Screening Limits ("FSL") were not arbitrarily modified by the FEI Laboratories, but applied consistently, and that in the case at hand, the established Screening Limit for Morphine had been exceeded. Lastly, that FSLs were established amongst others to protect Persons Responsible against false positive findings caused by for example contaminated feed, and that the PR had not provided any scientific evidence for his allegation that the alleged low concentration detected in the Horse's sample had been caused by contaminated feed. The FEI argued that the PR had neither established how the Prohibited Substance had entered into the Horse's system, nor that he bore no (significant) Fault or Negligence for the respective rule violation. That therefore, the requirements for eliminating or reducing the otherwise applicable sanctions were not met, and that given that a Banned

Substance was in question, the sanction to be imposed on the PR, in particular the period of Ineligibility to be imposed, should be two (2) years. That FEI concluded that the request for the Second Preliminary Hearing should be rejected, since the PR had not established, as required under Articles 7.4.3 (i) and (ii) of the EAD Rules, that new evidence existed that, if known at the time of the Preliminary Hearing, might have lead to the lifting of the Provisional Suspension, or that there was a likelihood of success on the merits and the continuation of the Provisional Suspension would cause undue harm or prejudice to the Person Responsible.

20. On 9 February 2012, the PR submitted a further report by Dr. Montana and Prof. Carli. In that report, the Experts suggested that in light of the fact that Morphine might be present in horse feed as a result of contamination during normal cultivation, processing or treatment, storage or transport, a threshold should apply to Morphine. They further questioned whether a FSL had been applied by the laboratory, and why that FSL was included in the analysis report, and further not revealed by the FEI.

21. Further on 9 February 2012, the FEI submitted a statement by Ms. Unt. Ms. Unt underlined that from the concentration of Morphine alone it was not possible to draw any conclusions as to the source of the Morphine, and that the PR, based on the information provided, had not presented an explanation as to how the Prohibited Substance had entered the Horse's system. Ms Unt further confirmed that FSLs were applied by all FEI accredited laboratories, and that cases were only reported as positive provided that the concentration detected was above the FSL, and that this was also true for the case at hand.

22. Further on 9 February 2012, a second Preliminary Hearing took place upon request by the PR. During the second Preliminary Hearing, and following request by the PR, the Parties agreed that the PR would be allowed further time, to respond to the FEI submission of 9 February 2012.

23. On 10 February 2012, the PR submitted another report by Dr. Montana and Prof. Carli. The Experts reiterated the general risk of Morphine positives being caused by contamination, and further criticised the FEI for calling the case positive, without revealing the applicable FSL. Lastly, that without knowing either the concentration detected in the sample, or the FSL, it was impossible for them or the PR to establish the source of the Prohibited Substance.

24. By Preliminary Decision of 17 February 2012, the Tribunal held that it was for the FEI to establish adequate FSLs, and to determine whether or not to make those available to Persons Responsible. That the PR had not fulfilled the requirements of Article 7.4.3 of the EAD Rules, and that therefore, the Provisional Suspension was to be maintained.

4.5 The further proceedings

25. On 23 February 2012, the FEI informed the PR that it had recently learnt from HFL that, based on the information available, that HFL estimated the concentration of the Morphine in the A-Sample in the region of 130ng/ml of Morphine (or 210 ng/ml of Morphine Glucuronide). The FEI stressed that Morphine was not a Threshold Prohibited Substance, and that a quantitative determination of the concentration was therefore not required, and not performed.

26. On 9 March 2012, and following the request of the PR, the FEI submitted a statement by Mr. Steve Maynard, Laboratory Director at HFL. Mr. Maynard explained that given the fact that Morphine was not a Threshold Substance and the analysis performed not intended to provide data regarding the concentration, Dr. Montana and Prof. Carli had apparently based their calculation on a number of assumptions, and that the spiked control reference sample had been misconstrued by the experts. Mr. Maynard further confirmed his estimation of the concentration to be 133ng/ml.

27. On 16 March 2012, the PR submitted another report by Dr. Montana and Prof. Carli, in which the Experts stated that following the information provided by Mr. Maynard, the average concentration of Morphine in the A- and the B-Sample would be at about 120 ng/ml, with a standard deviation of 9.35. That, in order to achieve statistical probability of 99,9% in confirmation of the figure required the application of four standard deviations to the average figure, and that from those calculations, the average concentration could be determined to be in the range of 80 and 150 ng/ml. That a concentration of this range was compatible with the ingestion of the substance from a food related source, and was on the other hand equal to 1% of a therapeutically effective concentration. The Experts further explained that the feed given to the Horse until 21 October 2011 had been analysed, and that the analysis of one out of five products, "NAF 5 Star Integrator", had "incontrovertibly" demonstrated the presence of Morphine. That further, two samples of the Horse's hair, one taken on 16 December 2011, and another one on 5 March 2012, had been analysed, and that the sample taken in 2011 was positive for Morphine and Papaverine, and the sample taken in 2012 was negative. That furthermore, as of 15 December 2011, the Horse had been fed products that were not contaminated with any opiate derivatives, and that the negative result of the Horse's hair of March 2012 established that the positive test result of the Event had been caused by contaminated feed.

28. On 19 March 2012, the PR requested a third Preliminary Hearing, arguing that based on what had been provided by him by then, in particular the reports by Dr. Montana and Prof. Carli, he had met the requirements for another Preliminary Hearing. The PR further provided a letter by the Bornargo Equestrian Centre (the "Centre"), alleging that the Horse had been stabled at the Centre during the Event, and that the Centre had provided the hay for the horses stabled over there. That the

hay provided was grown in an area where many weeds were present, including various types of poppies. That he recently had been given access to the Centre, in order to allow him to analyse the soil and crops, and would provide the results of that analysis as soon as they came in.

29. On 23 March 2012, the PR provided supplemental documentation supporting his request for a third Preliminary Hearing. Specifically, the PR provided the following:

(a) A report by Professor Veniero Gambarro, of Università Degli Studi Di Milano Department of Pharmaceutical Science and Chemical Toxicology. Professor Gambarro explained that he analysed five different samples of feed given to the Horse at the time of the Event. That the analysis consisted of extracting the organic solvents from the feed samples, restoring the dried organic extracts with a suitable solvent and subsequently analysing these using three techniques, Thin Layer Chromatography (TLC), Capillary Column Gas Chromatography with Mass Selective Detector (GC/MS), and Liquid Chromatography with Mass-Mass Detector (LC/MS-MS). Furthermore, that the analysis performed on the feed "NAF 5 Star Magic Powder" ('NAF MAGIC') revealed "traces of Morphine".

(b) An examination proposal by Dr. Luca Davide Alzati, Agronomist, into the possible contamination of the soil in the area around the Centre. That it had not been possible to detect "visually any infestation of the Common Poppy in the meadows analysed". That nevertheless, due to the farm's location, the type of agriculture carried out, the neighbouring presence of woodland and uncultivated land, an infestation of the meadows with the Common Poppy was "highly plausible". Dr. Alzati recommended that additional analysis be carried out on the fields during the maturity period of the Common Poppy life cycle.

(c) A report by Dr. Barbara Candiani, Forensic Scientist of Studio Galileo, regarding the analysis of the hair samples taken from the Horse. Dr. Candiani confirmed that the analysis was carried out in compliance with the Italian laboratory standards for analysing the presence of drugs for toxicological-forensic and medical-legal purposes. She explained that a Control Sample was prepared, extracted and then analysed using the Gas Chromatography/Mass Spectrometry method. That two samples of the Horse's hair were analysed against the Control Sample, the first sample of 14cm, taken from the Horse on 16 December 2011, and the second of 4.5cm, taken on 5 March 2012. That the first sample of hair analysed contained traces of Morphine and Papaverine, but the sample taken later was negative for the two substances. Dr. Candiani concluded that it was not possible to precisely estimate the date on which the Morphine had been ingested by the Horse, but that it could be concluded that the Horse had ingested Morphine during the 14 months preceding the date on which the sample had been collected.

(d) An email exchange between the PR and "NAF Club" of October 2011, in which NAF, following the PR's inquiry regarding compliance of NAF's Magic 5 Star powder with the "FEI Rules in force starting from January 1st 2012", NAF confirmed that all of its products were suitable for horses competing under FEI Rules. NAF further confirmed being signatory to the British Equestrian Trade Association UFAS NOPS Code, which ensured that all its products were suitable for competition use.

30. The PR contended that the Parties involved had accepted that the concentration detected in the sample of the Horse was in the range of 80 to 150ng/ml. Further that the concentration detected was equal to about 1% of a therapeutically effective concentration (as calculated under the Toutain model), and that this concentration was compatible with the ingestion of the Prohibited Substance from a food related source. That he had therefore established, on the balance of probabilities, that the Morphine came to be present in the Horse's system through the ingestion of contaminated feed, in particular from a contaminated batch of 'NAF MAGIC'. The PR further suggested that it could be concluded that the Morphine had been administered to the Horse without his knowledge, and without intent to enhance the Horse's performance.

31. On 26 March 2012, the FEI submitted a copy of the decision rendered in the case of KARABIL KAIYA HAI (Case 2011/BS09, Final Tribunal Decision dated 21 March 2012), to the PR.

32. On 30 March 2012, the PR submitted a Preliminary Report by Dr. Alzati. Dr. Alzati explained having investigated the possibility that hay produced in the area surrounding the Event, and fed to the Horse at the Event, may have been contaminated with an infestation of the widespread *Papaver Rhoeas* L, otherwise known as the Common Poppy. That two cuts of hay were made yearly, the first one in May and the second one in late July or August. That the soil samples taken from the fields were in the process of being tested at the time the report was submitted. Dr. Alzati concluded that it had not been possible to detect "visually any infestation of the Common Poppy in the meadows analysed". That nevertheless, due to the farm's location, the type of agriculture carried out, the neighbouring presence of woodland and uncultivated land, an infestation of the meadows with the Common Poppy was "highly plausible". Dr. Alzati further recommended that additional analysis be carried out on the fields during the maturity period of the Common Poppy life cycle.

33. On 16 April 2012, the FEI provided its response to the PR's submission. The FEI submitted that, by means of the positive results of the A- and B-Sample analysis, it had provided sufficient proof of a violation of Article 2.1 of the EAD Rules, in accordance with Article 3.1 of the EAD Rules. The FEI reiterated that Morphine was not classified as a Threshold Prohibited Substance and that therefore any concentration of the substance was sufficient to establish a rule violation under Article 2.1 of the EAD Rules. That furthermore, the PR had not pursued his request for the DNA testing. In this context the FEI argued that in light of the fact

that in the Medication Control Form completed at the Event and signed by the PR, both blood and urine had been entered as taken from the Horse, it was most likely that the testing veterinarian at the Event, when updating the Horse's passport, omitted to indicate that urine had been taken from the Horse, in addition to blood.

34. Together with its submission, the FEI provided the following expert reports in support:

(a) Report by Dr. Yves Bonnaire, Director of the Laboratoire des Courses Hippiques (LCH), Paris, France. Dr. Bonnaire agreed with the concentration as estimated by Dr. Maynard, stating that a concentration of this amount could result from either the administration of Morphine a few days prior to the Event, or from contamination of feed. That, contrary to what was alleged by Professor Carli and Dr. Montana, the concentration as such did not allow any definitive conclusion as to the source of the substance. Regarding the results of the feed analysis carried out by Prof. Gambarro, Dr. Bonnaire took the position that the confirmation of the presence of Morphine in the NAF MAGIC had not been established in accordance with standard analytical procedures. In particular, that no details of the sampling process had been submitted and that it was not known whether the samples analysed by Prof. Gambarro were taken from sealed or unsealed products. Further that no information was provided as to the concentration of the 'traces of Morphine' found in the NAF MAGIC. With respect to the preliminary report submitted by Dr. Alzati, Dr. Bonnaire stated that the additional inspection of the hay fields proposed by Dr. Alzati, aiming at establishing the presence of *Papaver rhoeas* L., would not provide any further evidence for the PR's allegation of contamination since that plant is known to not contain morphine, but other alkaloids.

(b) Report by Dr. Pascal Kintz, President of the Society for Hair Testing. Dr. Kintz took the position that the report by Studio Galileo on the Horse's hair did not contain the necessary analytical data, and that the analytical standards complied with during the testing were inadequate. Furthermore that in order to establish the exposure to a plant of the poppy seed family, the simultaneous identification in the hair sample of morphine, papaverine, thebaine was required, as well as the verified absence of acetylmorphine and acetylcodeine. That no respective evidence had been provided by Studio Gallileo. Dr. Kintz concluded that the presence of Morphine or Papaverine was not validly established by means of the evidence provided to him, and that even if the presence in the hair of Morphine or Papaverine had been established, this would not establish that the positive finding of Morphine in the sample taken from the Horse at the Event resulted from the ingestion by the Horse of plants from the poppy seed family.

35. In light of the two reports, the FEI submitted that the PR had not established that the Prohibited Substance had entered the Horse's body following ingestion of contaminated feed. Specifically, the FEI argued that

the PR failed to provide details of the amount of allegedly contaminated feed administered to the Horse, the time and route of administration. Relying on the expert report of Dr. Bonnaire, the FEI contended that there was no evidence demonstrating that the presence of Morphine resulted from this ingestion. Furthermore the FEI stressed that the PR had not provided any evidence that the environment or the feed provided at the Event was contaminated. With regards to the PR's Fault or Negligence for the rule violation, the FEI argued that in the absence of an explanation of the source of the Prohibited Substance in the Horse, the PR's fault or negligence could not be assessed, and that additionally there were no grounds to find that the PR had proactively enquired about or supervised the Horse's health, stabling and feed condition, or its security arrangements.

36. On 18 April 2012, the Tribunal decided that the requirements for a third Preliminary Hearing under Article 7.4.3 of the EAD Rules were not met, and that therefore the respective request by the PR would not be granted. The Tribunal further maintained the Provisional Suspension.

37. On 24 April 2012, the PR filed his rebuttal submission. Together with his submission, the PR provided a further report by the Experts, as well as of Prof. Gambarro, Dr. Montana and Prof. Carli, in response to the reports by Dr. Bonnaire and Dr. Kintz, concluded that by the evidence adduced it was not established that the positive test result had been caused by deliberate administration to the Horse of a medical product containing Morphine. That, in order to clearly establish whether the Morphine had entered the Horse's system as a result of contaminated feed, or as a result of administration to the Horse of a Morphine containing product, further tests would need to be performed. The experts repeated that the FEI, by rejecting his requests, had not allowed him to perform the required further tests. In his second report, Prof. Gambarro, explained having analysed two further samples of NAF MAGIC. That the first sample, recorded as 'batch 76', contained 3kg of the product and the second sample, containing 150g of the product, was recorded as 'batch 71'. That both samples revealed traces of morphine and codeine. Further, referring to the FEI Tribunal decision of ABC CRI CRI (Case 2007/35, Final Tribunal Decision dated 7 March 2008), the PR argued that in order to establish the source of a Prohibited Substance it was sufficient to provide confirmation by the manufacturer of the respective Prohibited Substance in its feed. The PR maintained that by the evidence provided he had furthermore shown a causal link between the positive test result and the feed contamination and that therefore it was unjust and discriminatory to impose a sanction on him.

4.5 The Hearing

38. The Hearing took place on 2 May 2012. The Parties agreed that the FEI had discharged its burden under Article 2.1 and 3.1 of the EAD Rules. The Parties further agreed that the analysis of the Horse's hair merely established that Morphine had been present in the Horse's body at a

particular point of time, but did not establish the source of the Morphine. The FEI, addressing the source of the Prohibited Substance, argued that the PR had not provided any reliable evidence, compliant with generally applied analytical standards, supporting his allegation that the positive test result was caused by the ingestion of contaminated feed by the Horse. Addressing the case of ABC CRI CRI, the FEI contended that the case was decided under the previous anti doping system, and that the PR in that case had proven how the Prohibited Substance had entered the Horse's system, and that the PR bore No Fault or Negligence because the manufacturer had admitted the contamination of the feed. That furthermore, according to more recent FEI Tribunal decisions (KARABIL KAIYA HAI), in cases of alleged contamination of feed, the PR not only had to establish that the Horse's feed was contaminated, but also the link between the alleged contamination and the positive test result. That in the case at hand, the PR had failed to meet this burden as he did not prove a causal connection between the contaminated feed and the positive test result.

39. The following witness testimony was adduced:

(a) Prof Gambarro explained that he did not record the batch numbers of the five feed products that had been first sent for analysis, which formed the contents of his first report. That upon the positive finding in one of the five products first analysed, he had recorded the batch numbers of the two further samples sent for analysis, the results of which had been the subject matter of his second report. Prof. Gambarro explained that the second set of samples received by him had arrived in sealed containers, and that the finding of traces of Codeine and Morphine in those later samples demonstrated the presence of poppy seeds, as both substances were main alkaloids of the plant.

(b) Dr. Montana testified alleging that when Prohibited Substances were deliberately administered to a horse, no metabolites would be found in any analysis. Further, that where the source was organic both the Prohibited Substance and other alkaloids would be found. Dr. Montana confirmed his position that the estimated low concentration of the Prohibited Substance found in the Horse's body was consistent with ingestion via contaminated feed, and that in case the concentration had been above 200 ng/ml, the positive could not result from a feed related source. Dr. Montana confirmed that the first batch of NAF MAGIC analysed was from a new sealed container, and that the second batch consisted of the remnants of an open container and a further sealed container.

(c) Dr. Bonnaire confirmed that only Morphine had been detected in the Horse's A- and B-Sample. That, based on the concentration alone, one could not conclude that the Prohibited Substance had entered the Horse's system following administration for therapeutic reasons, or by route of contaminated feed. Furthermore, that the ingestion of Morphine from contaminated feed usually yielded to a concentration of between 20 and 60 ng/ml, and that the estimated concentration of around 130 ng/ml

detected in the case at hand would rather speak against contamination being the source of the positive finding. That in order to arrive at a concentration of 130 ng/ml, the Horse would have had to consume more than 10 mg of Morphine per day, a rather high concentration if consumed through equine feed.

40. The PR confirmed during the hearing that the feed given to the Horse was certified and guaranteed around the world as compliant with FEI Regulations. That for this reason he trusted the contents of the feed.

41. The PR maintained the arguments made throughout the proceedings, stating that to conclusively establish that the source of the Prohibited Substance was of organic origin, the Tribunal should consider the necessity of further analysis on the B-Sample to prove the existence of other opiate alkaloids. Regarding the possible reduction or elimination in the period of Ineligibility, the effort made by the PR in his investigations, including contacting the manufacturer of the product, should be considered, as in the case of ABC CRI CRI.

42. By Interim Order dated 14 May 2012, the Tribunal suggested that given the unique circumstances of the case, and in accordance with Article 18.12 of the IRs, further investigations be made into the question of whether the Adverse Analytical finding may have been caused by contamination. That to this aim, the PR sent any feed from the same batch of the allegedly contaminated feed NAF MAGIC to HFL, with clear documentation of the chain of custody indicated from the stable to the Laboratory. Further that HFL tested the feed for contamination, and used any other existing testing possibilities in order to determine whether the positive test result had been caused by contamination. Following the FEI's and the PR's agreement with the Tribunal's proposal, the Parties were permitted to comment on the test results, within five days of the receipt of the test results.

43. The analyses of the feed samples took place on 13 and 14 June 2012. The PR first request for Dr. Montana to attend the analysis, and later on requested to be represented by Dr. Giacomo Luca Visconti. During the analyses, Dr. Visconti made several comments, in Italian language, on the forms to be signed by him. Regarding one of the three samples, Dr. Visconti commented that the sample was open, and not sealed with any sealing or rope. Dr. Visconti furthermore signed the HFL Counter Analysis Forms, confirming for each sample that he considered "*that the sample was in good condition*" and agreed "*that the analysis shall proceed*".

44. On 19 June 2012, the FEI forwarded the results of the analysis to the PR. The results of all three analyses performed by HFL turned out negative for Morphine.

45. On 22 June 2012, the PR provided his comments to the analyses results, in the form of a Report by Prof. Carli, Dr. Montana and Dr. Visconti. In a nutshell, the experts contended that the test results had to

be disregarded insofar as the samples, at the time of the opening, were not sealed in the original bag with seal N 1303453, and furthermore one of the samples had been opened before the analysis.

46. On 25 June 2012, the FEI provided its comments to the analyses results and the comments by the PR. The FEI submitted that following the PR's allegations regarding the analyses, it had contacted HFL, which had explained that only the sealed bag, in which the three samples had been received, had been opened upon arrival at HFL, as well as one of the samples, in order to verify their content. The FEI furthermore highlighted that Dr. Visconti, in the paperwork completed during the analysis, had specifically confirmed for each sample that he considered "that the sample was in good condition" and had agreed "that the analysis shall proceed". The FEI argued that the opening by HFL of the bag would not break the chain of custody of the three samples, and that the test results were therefore valid. The FEI further explained that the PR had contacted the producer of the Horse's feed, Greencoat Limited, and had informed Greencoat Limited of the fact that samples of batches 071, 075 and 076 had been sent to HFL, for testing. That in the following, Greencoat Limited had recalled several products in sealed pots from the respective three batches, and that those products had also been analysed by HFL. That all those five samples analysed by HFL were also negative for Morphine. Together with its submission, the FEI submitted documentation regarding the test results. The FEI therefore took the position that the PR had not established any contamination of the feed used by him for the Horse, and had therefore not established that any contamination had caused the positive test result.

47. On 26 June 2012, the PR, in response to the FEI submission, the PR contended that the boundaries of the dispute had been broadened beyond measure, now encompassing interests (including financial) that are above and far removed from what should be the spirit of the proceedings in question.

5. The Decision

5.1. Jurisdiction

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

5.2 The Person Responsible

49. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he competed with the Horse at the Event.

5.3 The Decision

50. 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 the HFL 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. The Tribunal understands that Morphine is not classified as a Threshold Substance under the EAD and the VRs, and that therefore, the levels detected are irrelevant in order to establish a positive finding.

51. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules. This is undisputed between the Parties.

52. 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 he 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.

53. 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 prerequisite to the application of EAD Rules Article 10.5. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

54. The Tribunal finds that the PR has failed to establish on the balance of probability how the Morphine entered the Horse's body. First, the Tribunal holds – as agreed by the Parties – that the test results of the Horse's hair merely confirm that some Morphine had been present in the Horse's system at some stage. That however, the test results do not establish how the Morphine had entered the Horse's system. The Tribunal further holds that the tests performed by Dr. Alzati of the soil do not establish any contamination of the soil with Morphine or other alkaloids of the poppy family, given that the contamination had only been considered as "highly plausible", but not scientifically proven. The Tribunal furthermore holds that no evidence has been provided as to what amount of allegedly contaminated hay was ingested by the Horse during the Event. Regarding the other feed given to the Horse, in particular the product NAF MAGIC, the Tribunal decides that the analysis undertaken by Prof. Gambarro does not comply fully with universally acceptable scientific standards for testing. That furthermore, the documentation provided by Prof. Gambarro did not establish a clear chain of custody over the feed products analysed from the time they were collected by or on behalf of the PR to the date on which they were tested. Moreover, the Tribunal takes

notice of the fact that the feed samples that had been analysed by HFL, following its order of 14 May 2012, had also resulted in negative findings of the three samples analysed. The Tribunal furthermore takes into account the testimony of Dr. Bonnaire, that the accepted estimated concentration of 130 ng/ml is unusually high for Morphine ingested from contaminated feed. Evaluating all of the evidence and explanations submitted, by reference to the established principles required to satisfy the legal burden, the Tribunal is of the opinion that the PR has failed to prove the concrete source of the Morphine. Consequently the Tribunal accepts the FEI argument that if the source of the substance cannot be explained then "logically one cannot assess any claim by the PR that it got into the Horse's system without any fault or negligence on the part of the PR" (CAMIRO, Final Tribunal Decision dated 22 December 2008) and Court of Arbitration for Sport in IWBf -v- UKAD & GIBBS (CAS 2010/A/2230). The Tribunal therefore does not need to address the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the positive findings as required by Articles 10.5.1 or 10.5.2 of the EAD Rules in order to eliminate or reduce sanctions.

5.4 Disqualification

55. 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 EAD Rules Article 9.

5.5 Sanctions

56. 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 imposes the following sanctions on the PR, in accordance with GRs Article 169 and Articles 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **2 (two) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 21 November 2011 to 30 July 2012, shall be credited against the period of Ineligibility imposed above. Therefore, the period of Ineligibility is deemed to expire on 20 November 2013.
- 2) The PR is fined **CHF 1000.-**.
- 3) The PR shall contribute **CHF 1500.-** towards the legal costs of the judicial procedure, as well as **CHF 516** as costs of the B-Sample analysis.

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

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

6. DECISION TO BE FORWARDED TO:

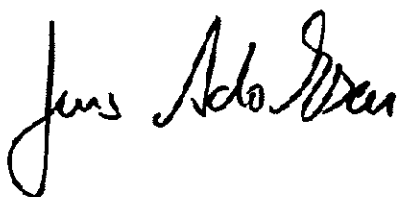
A The person sanctioned: Yes

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, appearing to read 'Jens Adolphsen', is centered on the page.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen