



## DECISION of the FEI TRIBUNAL

dated 18 June 2015

**Positive Anti-Doping Case No.:** 2014/BS02

**Horse:** BROOKLEIGH CASPAR

**FEI Passport No:** AUS40748/QAT

**Person Responsible/NF/ID:** Nasser Khalifa N.J Al Thani/QAT/10086848

**Event/ID:** CEI1\* - Doha, Mesaieed (QAT), 2014\_CI\_1670\_E\_S\_01\_01

**Date:** 11 April 2014

**Prohibited Substances:** Heptaminol, Phenylbutazone, Meloxicam, Dexamethasone

### I. COMPOSITION OF PANEL

Mr. Pierre Ketterer, Chair

Mr. Henrik Arle, Panel member

Dr. Armand Leone, Panel member.

### II. SUMMARY OF THE FACTS

1. **Memorandum of case:** By Legal Department.

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.

3. **Oral hearing:** none

### III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23<sup>rd</sup> edition, effective 7 November 2013 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 16 January 2014, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Nasser Khalifa N.J Al Thani

**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 – 2.8 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."

#### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

## **1. Factual Background**

- 1.1 BROOKLEIGH CASPAR (the "Horse") participated at the CEI1\* in Doha, Mesaieed, Qatar, on 11 April 2014 (the "Event"), in the discipline of Endurance. The Horse was ridden by Nasser Khalifa N.J Al Thani who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 11 April 2014.
- 1.3 Analysis of urine and blood sample no. 5527676 taken from the Horse at the Event was performed by the FEI approved laboratory, Laboratoire des Courses Hippiques ("LCH"). The analysis of the sample revealed the presence of Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone in the urine.
- 1.4 The Prohibited Substances detected are Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone. Heptaminol is a stimulant that dilates blood vessels and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Phenylbutazone and Meloxicam are non-steroidal anti-inflammatory drugs (NSAID) used as pain relieving anti-inflammatory medication. Dexamethasone is a corticosteroid with anti-inflammatory effect. Phenylbutazone, Meloxicam and Dexamethasone are classified as Controlled Medication Substances. The file submitted to the Tribunal does not contain any Veterinary Form for the three Controlled Medication Substances and the Tribunal therefore concludes that no such form exists. Therefore, the positive finding for Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules (Article 10.6.6 of the EAD Rules).

## **2. The Further Proceedings**

- 2.1 On 11 June 2014, the FEI Legal Department officially notified the PR, through the Qatar Equestrian Federation ("QAT-NF"), of the presence of the Prohibited Substances 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 him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 2.2 The Notification Letter further included notice to the owner of the Horse, that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, i.e. 11 June 2014, until 10 August 2014. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.
- 2.3 In the Notification Letter the PR was also informed that due to the fact that he was under eighteen (18) years at the time when the entry was submitted, he had to inform the FEI of the representative nominated

for him before the Event, in accordance with Article 118.4 of the GRs.

### **3. The B-Sample analysis**

- 3.1 Together with the Notification Letter of 11 June 2014, the PR and the owner of the Horse were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or 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.
- 3.2 Neither the PR nor the owner of the Horse requested for the B-Sample to be analysed and are therefore deemed to have waived their right to the B-Sample analysis.

### **4. Written submissions by the PR**

- 4.1 On 26 October 2014, and following several reminders by the FEI, the PR provided his explanations for the positive finding. He explained that he had had the Horse for six months prior to the Event. That the Horse had no veterinarian, and that no special treatment by a veterinarian had been provided to the Horse, in the six months prior to the Event. Further, that no substances had been administered to the Horse in the year prior to the Event. That ten days prior to the Event four injections had been given to the Horse, and that it had been a mistake by him to allow the injections being made. Finally, that he had tried to follow the FEI rules, and that he would ensure that a similar incident would not happen again.
- 4.2 Together with his explanations the PR provided a statement by Mr. Bhiv Singh Rajput, trainer of the Horse. Mr. Rajput explained that he did not know when the treatment had been given, and that the injections had been given in his absence and without his permission.

### **5. Further proceedings**

- 5.1 On 31 October 2014, the FEI informed the PR that the statement provided by him was not very clear, and did not contain any details, especially with regards to the four injections allegedly administered to the Horse. The FEI therefore invited the PR to supplement his statement, and furthermore invited him to present a copy of the FEI Medication Logbook for the Horse.

### **6. Supplemental submission by the PR**

- 6.1 On 26 January 2015, the PR submitted a statement signed by himself and Mr. Rajput. The two individuals explained that they had been given two little bottles containing products, one of 25 ml and the other one of 50 ml, by the previous owner of the Horse, Mr. Moshab Al Rayas from the

United Arab Emirates. That Mr. Al Rayas had told them to give an injection to the Horse, two days prior to the Event in order to "give him more power", and that the products were legal. That they had trusted the owner, and that they had not known what was in the bottles. That accordingly, two days prior to the Event Mr. Dayal Singh, a groom, had given the injections to the Horse. That the treatment had however not been recorded in the FEI Medication Logbook. Finally, that the Event in question was a competition without prize money and that they had completed the 80 km of the Event at a speed of 16.91 km/h.

## **7. Written submission by the FEI**

7.1 On 11 March 2015, the FEI provided its Answer to the explanations of the PR. In essence, the FEI submitted that:

- a) as the PR had not disputed that the Prohibited Substances Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone were present in the sample collected from the Horse at the Event, it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
- b) where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules – which mirrored the World Anti-Doping Code - that it had been deliberately administered to the horse in an illicit attempt to enhance its performance. That, as a result of this presumption of fault, and unless a PR was able to rebut this presumption of fault, according to Article 10.2 of the EAD Rules, a period of Ineligibility of two years applied to a first time offender of the EADCM Regulations in case of an Article 2.1 of the EAD Rules violation. That the PR had to establish to the satisfaction of the Tribunal - on a balance of probability - (i) how the Prohibited Substance(s) had entered the Horse's system, and (ii) that he bore No Fault or Negligence for that occurrence, i.e. that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Banned Substance, or (iii) that he bore No Significant Fault or Negligence for that occurrence.
- c) the PR had to provide clear and convincing evidence that proved how the Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone had entered the Horse's system. That however, the statements produced by him of 26 October 2014 and of 26 January 2015 were not very clear, and did not contain precise details. That they were furthermore in contradiction to each other in that once there was reference of two injections, whereas in the earlier statement, four injections were mentioned. Furthermore, that the timing of the administration was different and to what type of product had been used, by whom, a specific date and time of administration etc. That this was however not sufficient to meet the requirement of establishing the source of the Prohibited Substances in the Horse's sample.

- d) as a result, the presumption of intentional administration had not been rebutted and therefore any Article 10.4 of the EAD Rules plea had to be rejected, and the standard two-year sanction prescribed by Article 10.2 of the EAD Rules had to be applied. Moreover that the PR had not submitted any elements that allowed any judgment regarding his Fault or Negligence for the rule violation.
- e) Regarding fine and costs, the FEI requested that a fine of fifteen thousand (15,000,-) Swiss Francs (CHF) had to be imposed on the PR according to Article 2.1 of the EAD, as fairness did not dictate otherwise. Further that the PR had to be ordered to pay the legal costs that the FEI had incurred in pursuing this matter.

## **8. Rebuttal submission by the PR**

- 8.1 On 7 June 2015, the PR submitted an additional statement by himself. He further clarified that he had bought the Horse in March 2014, and that Mr. Rajput had then become the new trainer of the Horse. Further, that at the time he had not been aware that the two bottles existed and that the injections had been made to the Horse. Finally, that – following notification of the positive finding – he had stopped using Mr. Rajput as trainer for his horses.

## **9. Jurisdiction**

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

## **10. The Person Responsible**

- 10.1 Despite the fact that the PR was under eighteen (18) years when his entry was submitted he is the Person Responsible for the Horse, in accordance with Articles 118.3 and 118.4 of the GRs, as he had competed with the Horse at the Event.

## **11. The Decision**

- 11.1 As set forth in Article 2.1.2 of the EAD Rules, sufficient proof of an EAD Rule violation under Article 2.1 is established by the presence of a Banned Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone 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.

- 11.2 The FEI has thus established an Adverse Analytical Finding for a Banned Substance and several Controlled Medication Substances (for which no Veterinary Form exists), and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.
- 11.3 As set forth in Article 10.6.6 of the EAD Rules, where a PR, based on the same factual circumstances, is found to have committed a violation involving both a Controlled Medication Substance(s) under the ECM Rules and a Banned Substance under the EAD Rules, the PR shall be considered to have committed one EAD Rule violation and the sanction shall be based on the Banned Substance that carries the most severe Sanction.
- 11.4 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and the PR has the burden of proving that he bears "No Fault or Negligence" for the positive finding as set forth in Article 10.4.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the EAD Rules, the PR must first establish how the Prohibited Substance(s) entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.4 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".
- 11.5 In rendering its decision the Tribunal takes note of the PR's explanations on how the Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone had entered the Horse's system. The Tribunal further takes note that the statements provided by the PR contain contradictory explanations, in particular as regards the number of injections and the timing of administration. The Tribunal therefore finds that no clear and convincing evidence has been provided with regards to the source of the Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone. Firstly, the PR has not established that the product(s) allegedly administered to the Horse contained the Prohibited Substances detected in the Horse's sample, i.e. Heptaminol, Phenylbutazone, Meloxicam and Dexamethasone. Furthermore, no further evidence – other than the PR's and Mr. Rajput's word - regarding any alleged injection(s) to the Horse by Mr. Singh has been provided. This is even more the case as Mr. Singh himself has not confirmed such administration(s) by any means, and as such treatments have not been recorded in the FEI Medication Logbook. Moreover, the Tribunal holds that none of the explanations provided with regards to timing and dose allegedly administered are neither clear nor convincing, as no information with regards to the exact dose and timing of administration(s) has been submitted. As a result of the foregoing the Tribunal holds that the PR has not established – by a balance of probability – how the Prohibited Substances had entered the Horse's system.

- 11.6 Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the EAD Rules.
- 11.7 As set forth in Articles 10.6.6 and 10.5 of the EAD Rules, the occurrence of multiple substances may be considered as a factor in determining aggravating circumstances, which justify the imposition of a period of Ineligibility greater than the standard sanction, unless the PR can prove to the comfortable satisfaction of the Hearing Panel that he did not knowingly commit the EAD Rule violation. However, given the contradictory statements provided by the PR the Tribunal cannot – as outlined above – accept that the PR has established the source of the positive finding. It is therefore not in a position to determine whether the PR has knowingly commit the EAD Rule violation. The presence of multiple Prohibited Substances in the Horse’s system, aiming to give the Horse more “power”, do, in the opinion of the Tribunal, raise welfare concerns of the Horse. The Tribunal therefore finds that aggravating circumstances exist in the case at hand.
- 11.8 The Tribunal considers that the Provisional Suspension of the Horse of two (2) months, imposed by the FEI at the beginning of the proceedings, had been rightfully imposed in accordance with Article 7.4 of the EAD Rules, as the Horse's A-Sample had tested positive for a Banned Substance. Under Article 7.4 of the EAD Rules, the FEI has the discretion to impose a Provisional Suspension of any period of time on the Horse.

## **12. Disqualification**

- 12.1 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.

## **13. Sanctions**

- 13.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. Under Articles 10.6.6 and 10.5 of the EAD Rules, the occurrence of multiple substances may be considered as a factor in determining aggravating circumstances, which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years.
- 13.2 As set forth in Article 10.2 of the EAD Rules, and unless fairness dictates otherwise, a fine of CHF 15,000 is foreseen for an Article 2.1 or an Article 2.2 EAD Rule violation. When deciding the fine the Tribunal takes into consideration the number of Prohibited Substances detected and the level of the Event.



13.3 The 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 **twenty-seven (27) months** for the present rule violation. The period of Provisional Suspension, effective from 11 June 2014, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 10 September 2016**.
- 2) The PR is fined **five thousand Swiss Francs (CHF 5'000,-)**.
- 3) The PR shall contribute **two thousand Francs (CHF 2'000,-)** towards the legal costs of the judicial procedure.

13.4 No Person Responsible, who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or 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 at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.9.1 of the EAD Rules). Under Article 10.9.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

13.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.

13.6 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.

**V. 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, consisting of several overlapping loops and a long tail stroke extending to the right.

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**THE CHAIR, Mr. Pierre Ketterer**