



DECISION of the FEI TRIBUNAL

dated 13 July 2016

Positive Anti-Doping Case No.: 2014/BS04

Horse: KINKA'S BOY

FEI Passport No: NED41763

Person Responsible/NF/ID: Chenna Van De Spek/NED/10082068

Event/ID: CSIOP – Wierden (NED)/ 2014_CI_0372_S_P_01_05

Date: 04 – 07 June 2014

Prohibited Substances: Oripavine, Morphine

I. COMPOSITION OF PANEL

Mr. Henrik Arle, chair

Mr. Erik Elstad, member

Dr. Armand Leone, member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

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

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1st edition, effective 5 April 2010, updates effective 1 January 2014; and FEI Equine Anti-Doping and Controlled Medication Regulations ("**2015 EADCMRs**"), 2nd edition, effective 1 January 2015.



FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2014; and FEI Equine Anti-Doping Rules ("**2015 EAD Rules**"), 2nd edition, effective 1 January 2015.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Chenna Van De Spek

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."

2015 EAD Rules Art. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.

III. DECISION

1. Parties

- 1.1 The Person Responsible ("PR"), Ms. Chenna Van De Spek, is show jumping rider for the Netherlands. The PR is a Minor.
- 1.2 The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Preliminary Decisions

- 2.1 On 15 September 2014, the Preliminary Hearing Panel – following a Preliminary Hearing upon request by the PR – found that the prerequisites for the lifting of the Provisional Suspension under Article 7.2.4 of the EAD Rules had not been met at the time. The Preliminary Hearing Panel therefore decided to maintain the Provisional Suspension of the PR.
- 2.2 On 19 December 2014, the Preliminary Hearing Panel – following a request for lifting of the Provisional Suspension by the FEI – decided to lift the Provisional Suspension of the PR. The Preliminary Hearing Panel found that there might be a possibility that the Provisional Suspension, if maintained, could potentially result in a longer duration than the Final Suspension imposed by the Tribunal.

3. Further proceedings

On 16 June 2016, and on 7 July 2016, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2014/BS04 – KINKA'S BOY and submitted the Agreement (together with the Case Summary (as per Articles 3.1 – 3.15 below) and the Full Reasoning for the Agreement (as per Article 3.16 – 3.22 below) to the FEI Tribunal for approval and incorporation into a Decision of the FEI Tribunal in accordance with Article 7.6.1 of the 2015 EAD Rules.

I – Case Summary (as provided to the Tribunal by the Parties as part of the Agreement referred to Article 4 below)



- 3.1 The PR took part with her horse KINKA'S BOY (the "**Horse**") at the CSIOP event held in Wierden, Netherland from 04– 07 June 2014 (the "**Event**"). As a member of the Royal Dutch Equestrian Federation (the "**Dutch NF**"), the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 3.2 The Horse was selected for testing on 05 June 2014. The resulting samples were transported to the FEI approved LGC Newmarket Road Laboratory ("**LGC**") in Cambridgeshire, UK for analysis.
- 3.3 By notification letter dated 9 September 2014 the FEI informed Ms Van De Spek, in her capacity as the Person Responsible, and the Dutch NF of an alleged violation by Ms Van De Spek of Article 2.1 (The Presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules, a Provisional Suspension had been imposed on her following (i) the positive finding of the Banned Substance Oripavine and the Controlled Medication Substance Morphine, in the A Sample of the Horse.
- 3.4 As the PR was under 18 years of age at the time when the entry was submitted, she was asked to inform the FEI about the representative nominated for her before the Event.
- 3.5 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 8 November 2014, had been imposed on the Horse.
- 3.6 A Preliminary Hearing took place before the Preliminary Hearing Panel of the FEI Tribunal, consisting of Mr Henrik Arle, on 12 September 2014.
- 3.7 The Preliminary Hearing Panel decided, on the basis of the written and oral submissions by the Parties, not to lift the Provisional Suspension effective as of 9 September 2014 and to maintain it. The Panel found no reason for lifting the Provisional Suspension as, based on the information provided thus far, the presence of the Prohibited Substances in the Horse's Sample was not disputed, and no reasons for the lifting of the Provisional Suspension under Articles 7.4.2 or 7.4.4 of the EAD Rules were given. The EAD Rules foresee the possibility of imposing a Provisional Suspension based on the results of the A Sample analysis only, and the Preliminary Hearing Panel was not aware of any case in the past years in which the FEI would not have made use of this provision.
- 3.8 The Provisional Suspension of the Horse was not questioned.
- 3.9 The B sample analysis was carried out on the 13-14 October 2014, and

confirmed the A Sample analysis.

- 3.10 In an email on 10 October 2014, the PR provided a list of the nutrition and supplements that the Horse was given in the period, and confirmed that one of them was Hartog Lucerne. Further the PR referred to the preliminary findings of Profs. Sloet and Fink stated that the combination of Oripavine and Morphine are not found in any pharmaceutical product and that such combination refers to f.i. papaver (poppy) in Soja (soy). The PR submitted that no fault or negligence was present.
- 3.11 On 7 November 2014, the PR provided further explanations. The PR submitted a document showing the ingredients of Hartog Lucerne mix showing that it mainly contains Lucerne. The PR stated that Lucerne is also known as Alfalfa (Medicago Sativa). Together with her explanations the PR submitted a document entitled "Results of Enquiries", setting out the Disciplinary Panel of the British Horseracing Authority's (BHA) decision in certain UK doping cases involving Oripavine and Morphine. As in connection with such cases, Dodson & Horrell Limited, manufacturer of Alfalfa Oil Plus, a similar product to Hartog Lucerne, had confirmed that a component product used in the production of Alfalfa Oil Plus had been contaminated with poppy seeds and that poppy seeds are naturally occurring sources of Morphine and Oripavine. Further, that the BHA Disciplinary Panel in these cases had therefore been satisfied that the source of the Prohibited Substances had been a batch of feed supplement, Alfalfa Oil Plus, manufactured by Dodson & Horrell Limited. The PR further provided results of an internet search, according to which Alfalfa (Medicago sativa) was also called Lucerne. Further, the PR submitted an invoice, dated 3 June 2014, for delivery of 60 kg of "HARTOG LUCERNE" to Jenco Stables on 27 May 2014. Finally, the PR also provided the product description of Hartog Lucerne.
- 3.12 In essence the PR submitted that:
- a) all horses and ponies – including the Horse - in the stable where the Horse was stabled, had been partially fed with Hartog Lucerne, a mix containing mostly Lucerne. That Lucerne was also known as Alfalfa (Medicago sativa).
 - b) as confirmed by Prof. Sloet-Van Oldruitenburg-Oosterbaan of the Veterinary school in Utrecht, the Netherlands - the simultaneous presence of Oripavine and Morphine in the same sample did not derive from a pharmaceutical product, but had to originate from plants. That – according to information found in the internet - the simultaneous



presence of Morphine and Oripavine originate from the opium poppy, and that the presence of Oripavine was indicative that the Morphine was of plant origin.

- c) the source of the Prohibited Substances was therefore poppy seed contamination. The PR highlighted in this respect that the manufacturer of a similar product to Hartog Lucerne, Alfalfa Oil Plus had confirmed that a component product used in the production of Alfalfa Oil Plus had been contaminated by poppy seeds.
- d) she had had no intention to administer any Prohibited Substances to the Horse, and that she had simply been unaware of the risks associated by feeding Lucerne, which had been promoted as being very healthy and which was administered to the horses of well known international yards.
- e) she therefore bore no Fault or Negligence for the Rule violation, and that as a result she requested the Lifting of the Provisional Suspension.

Together with her submission the PR requested the lifting of the Provisional Suspension on the 7 November 2014.

- 3.13 On 18 December 2014, the FEI requested the lifting of the Provisional Suspension. The FEI argued that based on the submissions made and the evidence submitted by the Parties, it believed that the prerequisites of Article 7.4.2 (ii) and/or potentially Article 7.4.2 (iii) of the EAD Rules were fulfilled.
- 3.14 The FEI further explained that based on the submissions made and the evidence provided, the most likely cause of the positive Oripavine finding was some sort of poppy seed contamination. That however limited information was available with regards to the PR's level of Fault or Negligence (if any) for the rule violation. The FEI further explained that its request for the lifting of the Provisional Suspension was aiming at avoiding the potential situation in which the Provisional Suspension would be of a longer duration than the Final Suspension (if any) imposed by the FEI Tribunal.
- 3.15 On 19 December 2014, the Preliminary Hearing Panel accepted that there may be a possibility that the Provisional Suspension, if maintained, could potentially result in a longer duration than the Final Suspension imposed by the FEI Tribunal. The Preliminary Hearing Panel therefore



took the decision to lift the Provisional Suspension with immediate effect.

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 4 below)

- 3.16 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF 15,000 shall also be imposed and appropriate legal costs.
- 3.17 Article 10.4 of the EAD Rules states “If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse’s system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.6 below.” Article 10.4 of the EAD Rules also states that it “only applies in exceptional circumstances”.
- 3.18 Based on the evidence and documentation supplied by the PR (as described in Section 3 above), the FEI has evaluated whether or not Article 10.4 was applicable. The definition of “No Fault or Negligence” in the EAD Rules confirms that “Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system” (emphasis added). The FEI has considered, that notwithstanding that she was not required to do so, the PR has made efforts to have the manufacturer of Hartog Lucerne perform analyses of the batches in question but that the manufacturer refused to do so. The FEI is satisfied that in light of the foregoing, the fact that the PR has not conclusively established how the Banned Substances entered the Horse’s system should not prevent the PR from relying on the defence of No Fault and Negligence.
- 3.19 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is satisfied that the PR had demonstrated that she bore



no Fault or Negligence in so far as she could not reasonably have been expected to take any further measures which would have prevented the Banned and Controlled Medication Substances entering the Horse's system. The FEI takes into account the fact that the Horse, and several other horses at the stable, had been regularly fed with feed with Hartog Lucerne, had never previously had any issues and had no reason to suspect that the contamination had occurred. Also, the PR's horses had never previously had a positive test.

- 3.20 The FEI accepts that the circumstances of the case were exceptional on the basis that the presence of the Banned and Controlled Medication Substances in the Horse's Sample and particularly the presence of Oripavine and Morphine, are consistent with poppy seed contamination. This is an issue that the FEI is aware of and there are currently two (2) other ongoing cases from 2014 before the FEI Tribunal involving possible contamination with Morphine and Oripavine and that, in two (2) 2015 cases, it was established that the source of involving Oripavine and Morphine was due to poppy seed contamination of a food product. Research provided to the FEI has stated that the opium poppy *Papaver Somniferum L* contains more than 40 different alkaloids; Morphine, Codeine and Thebaine are among the main alkaloids. Some strains of *Papaver Somniferum* also contain Oripavine. Oripavine is subsequently converted into Thebaine, which is in turn converted into Morphine. Oripavine is a substance that is not found in any veterinary or human medical product due to its very narrow therapeutic margin and extremely high toxicity levels.
- 3.21 Since the proceedings were opened against the PR, the FEI has with effect from 1 January 2016, amended the FEI Equine Anti-Doping and Controlled Medication Rules ("EADCMRs") where the concept of "Specified Substances" was introduced in to the EADCMRs. The introduction of the category of Specified Substances is the result of a lengthy consultation process that began in 2014 involving both the Veterinary Committee, the List Group and ultimately the National Federations. The purpose of the amendment is to recognise that it is possible for certain substances to enter a Horse's system inadvertently, due to a credible non-doping explanation, and therefore to allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision. The determination of which substances will be classified as Specified Substances is made by the FEI List Group together with the FEI Lab Group and both Morphine and Oripavine, with the latter remaining as a Banned Substance, are designated as "Specified Substances". Since the rules about Specified Substances have only applied since 1 January 2016, the FEI is satisfied that it would be



appropriate to apply the principle of "Lex Mitior" in accordance with Article 16.1.2 of the EAD Rules.

- 3.22 The FEI is satisfied that the criteria for the application of Article 10.4 of the EAD Rules had been met in that (i) the PR, in her capacity as a minor, was not required to establish how the Banned and Controlled Medication Substances came to enter the Horse's system (but to her credit made efforts to do so anyway), (ii) the PR has demonstrated that she bore No Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated and that no other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply.

4. Agreement

On 16 June 2016, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping Rules ("EAD Rules")

In the matter of the Adverse Analytical Finding related to the samples, which were collected from), Ms Chenna Van De Spek's horse KINKA'S BOY (the "Horse") at the CSIOP event held in Wierden, Netherland from 04- 07 June 2014, (the "Event"), Ms Van De Spek (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties") agree, in accordance with Article 7.6.1 (*Agreement between Parties*) of the EAD Rules, on the following:

- 1) The presence of the Banned Substance(s) in the Horse's sample constitutes a violation of Article 2.1 of the EAD Rules.
- 2) Ineligibility Period:
The Parties agree that the prerequisites for Article 10.4 of the EAD Rules (Elimination of the Period of Ineligibility Where there is no Fault or Negligence) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be eliminated.



- 3) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules.
- 4) Provisional Suspension of the Horse:
The PR did not contest the Provisional Suspension imposed on the Horse and therefore accepts that it remained in place until 8 November 2014.
- 5) Disqualification of Results:
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horse at the Event are disqualified, including forfeiture of medals, points and prizes.
- 6) Full Settlement and Resolution:
This agreement resolves and settles all outstanding matters between the FEI and the PR, Chenna Van De Spek, including the horse KINKA'S BOY.
- 7) No Other Sanctions:
No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs.
- 8) Right of Appeal:
This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

End Quote

5. Jurisdiction of Tribunal

- 5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.
- 5.2 As a member of the Dutch NF, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the 2015 EAD Rules (Agreement between Parties) states that: *"At any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the*



FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.” The Tribunal finds that, following the “*Lex Mitior*” principle, the 2015 EAD Rules, including Article 7.6.1 of the 2015 EAD Rules, are applicable in the case at hand.

- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal finds no grounds to object to or disapprove the terms of the Agreement and is satisfied the Agreement constitutes a bona fide settlement of the present case.
- 6.2 In accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Article 4 above. Further, this Decision shall terminate the present case 2014/BS04 KINKA’S BOY.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Chenna Van De Spek, concerning the case 2014/BS04 KINKA’S BOY is hereby ratified by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL

A handwritten signature in black ink, which appears to be 'Henrik Arle', is centered on the page. The signature is written in a cursive style with a large initial 'H'.

THE CHAIRMAN, Mr. Henrik Arle