



DECISION of the FEI TRIBUNAL

dated 20 October 2015

Positive Anti-Doping Case No.: 2014/BS07

Horse: UP DATE 2 **FEI Passport No:** GER46325/ITA

Member of Support Personnel/NF/ID: Mr. Fabio
Mazzarella/VEN/10071586

Member of Support Personnel/NF/ID: Dr. William Yerkes/USA/10093172

Event/ID: CSI3* – San Giovanni in Marignano (ITA)/
2014_CI_0743_S_S_03_08

Date: 6 – 10 August 2014

Prohibited Substance: Stanozolol

Alleged violations: Use or Attempted Use of a Banned Substance or a
Banned Method (Article 2.2 of the EAD Rules)

I. COMPOSITION OF PANEL

Mr. Henrik Arle, Chair
Mr. Pierre Ketterer, Panel Member
Mr. Vladan Jevtic, Panel Member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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.

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

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

FEI Code of Conduct for the Welfare of the Horse.

2. Members of the Support Personnel: Mr. Fabio Mazzarella
Dr. William Yerkes

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."

EAD Rules Art. 2.2.1: "It is each *Person Responsible's* personal duty, along with its members of their *Support Personnel*, to ensure that no *Banned Substance* enters into the *Horse's* body. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the part of the *Person Responsible*, or member of his or her *Support Personnel* (where applicable), be demonstrated in order to establish an *EAD Rule violation* for *Use* of a *Banned Substance* or a *Banned Method*."

Annex 1 – DEFINITIONS of the EADCMRs: "*Support Personnel*. Any coach, trainer, athlete, *Horse Owner*, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a *Person Responsible* participating in or preparing for equine sports

Competition. Veterinarians are included in the definition of *Support Personnel* with the understanding that they are professionals subject to professional standards and licenses. An allegation that a veterinarian violated an *EADCM Regulation* will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."

III. DECISION

1. Background Facts and Procedural History

On 19 October 2015, the FEI informed the Tribunal that the FEI, Mr. Mazzarella and Dr. Yerkes (together referred to as the "Parties") had discussed potential resolution of the two cases, in accordance with Article 8.1.5 of the EAD Rules, and submitted the following for consideration and approval to the Tribunal:

1.1 *On 14 January 2015, the FEI commenced separate proceedings under the EAD Rules (the **EAD Rules**) against each of Mr Mazzarella and Dr Yerkes, in each case for breaching Article 2.2 of the EAD Rules (use of a banned substance) by injecting the horse UP DATE 2 (the **Horse**) with Stanozolol. Mr Mazzarella is the owner of the Horse, and Dr Yerkes is an FEI Permitted Treating Veterinarian engaged by Mr Mazzarella to look after the well-being of the Horse (along with other horses owned by Mr Mazzarella). In the same letter, the FEI provisionally suspended each of them with immediate effect from participation in the sport pending determination of these charges.*

1.2 *Article 8.1.5 of the EAD Rules provides that "[a] Person Responsible and/or member of the Support Personnel (where applicable) may acknowledge the EAD Rule violation and accept consequences consistent with Articles 9 and 10 below as proposed by the FEI."*

1.3 *Further to Article 8.1.5 of the EAD Rules:*

1.3.1 *Dr Yerkes admitted at the first opportunity (in signed statements dated 1 and 2 October 2014) that on 21 May 2014 he injected the Horse with a treatment called Stargate, which contains Stanozolol. Dr Yerkes noted that he gave the treatment to the Horse because he observed "clinical signs of liver and kidney pathology", and considered the Stargate to be an effective treatment for such ailments. However, since Stanozolol is a Banned Substance under the EAD Rules, administration of which*

to a competition horse is banned at all times, Dr Yerkes acknowledges that he thereby committed a violation of Article 2.2 of the EAD Rules.

1.3.2 On that basis, the FEI has proposed the following consequences, which Dr Yerkes wishes to accept: a two-year period of Ineligibility, starting (in accordance with Article 10.8.2 of the EAD Rules) on 21 May 2014, and therefore expiring at midnight on 20 May 2016. Because of his conduct in coming forward and admitting his violation at a time when the FEI was not aware of it, the FEI does not seek a fine against Dr Yerkes. It also waives its right to claim legal costs against him.

1.4 Also further to Article 8.1.5 of the EAD Rules:

1.4.1 Mr Mazarella has acknowledged that as the owner of the Horse he is the Person Responsible under the EAD Rules for the Horse at all times when it is out of competition, and as such it is his personal duty to ensure that no Banned Substances are administered to the Horse. See e.g. Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v FEI, CAS 2014/A/3591, para 203. Mr Mazarella therefore acknowledges that he also committed a violation of Article 2.2 of the EAD Rules by failing to put in place practices and procedures of supervision and control that would have prevented Dr Yerkes (the veterinarian to whom he had entrusted care of the Horse) injecting the Horse with Stanazolol on 21 May 2014. (Ibid at paras 221, 225-229, 235).

1.4.2 Mr Mazarella has pleaded, however, that the fault he bears for that violation is not "Significant Fault or Negligence" within the meaning of Article 10.4.2 of the EAD Rules, based on the following facts (which are agreed by Dr. Yerkes):

a. Mr Mazarella did not administer Stanazolol to the Horse himself. Instead it was administered by Dr. Yerkes, by injecting one ampoule of Stargate, containing 50 mg of Stanazolol, into the Horse's muscle on 21 May 2014.¹

¹ That was 80 days before the date that the blood sample was collected from the Horse that subsequently tested positive for Stanazolol (9 August 2014). However, the concentration of Stanazolol found in the Horse's blood sample was estimated to be only 4 pg/ml, and in the most recent study done in this area, it was found that it took up to 56 days for a single intramuscular injection of Stanazolol to clear the subject horses' systems completely, and the authors therefore took the view that in 95% of all cases such a dose should clear the system within 60 days (meaning that in 5% of cases it will take longer than that). Moeller et al, *Pharmacokinetics of Stanazolol in*

b. Mr Mazzarella had entrusted the care of his horses to Dr Yerkes for many years. He had made it clear to Dr Yerkes that he expected him to ensure that any medication given to his horses was in full compliance with the FEI rules, including the EAD Rules. It was reasonable for him to rely on Dr Yerkes in this manner: Dr Yerkes is a highly experienced and qualified veterinarian, and an FEI Permitted Treating Veterinarian, and he has looked after many competition horses (not just those belonging to Mr Mazzarella) for many years, without any prior adverse incident.

c. Dr Yerkes did not tell Mr Mazzarella that he had injected the Horse with Stargate, he did not send him a document or invoice recording that treatment, and nor did he make a record of it in the Horse's Medication Log Book. Therefore Mr Mazzarella did not discover that Dr Yerkes had administered Stanazolol to the Horse until after the blood sample collected from the Horse in August 2014 tested positive for Stanazolol.

1.4.3 Following the analysis adopted by the Court of Arbitration for Sport in the case of Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v FEI, CAS 2014/A/3591, paras 238-241, the FEI considers that the foregoing facts are sufficient to sustain a plea of No Significant Fault or Negligence and to justify a reduction of the otherwise applicable two-year sanction down to one year and seven months.

1.4.4 On that basis, the FEI has proposed the following consequences, which Mr Mazzarella wishes to accept:

a. A period of Ineligibility of one year and seven months, starting on 21 May 2014, and therefore expiring at midnight on 20 December 2015.

b. A fine of CHF 5,000. The FEI waives its right to claim legal costs.

c. Disqualification of all competitive results obtained by the Horse from 21 May 2014 to the date of provisional suspension of the Horse (on 29 September 2014).

1.5 Each of Mr Mazzarella and Dr Yerkes has committed to ensure

Thoroughbred horses following intramuscular administration, J. Vet. Pharmacol. Therap. 36, 201-204, accepted for publication 8 March 2012. Furthermore, in this case Dr. Yerkes has stated that he administered the Stargate to the Horse on 21 May 2014 because he observed "clinical signs of liver and kidney pathology." The FEI accepts that in cases of liver and kidney pathology, normal metabolism is hindered and therefore a longer withdrawal time than normal is to be expected.

that practices and procedures are put in place to ensure that an episode like this does not happen again in the future.

- 1.6 *Based on the foregoing, the FEI has invited the FEI Tribunal to find that the proposed sanctions are consistent with Articles 9 and 10 of the EAD Rule and so to issue this Decision. The parties have agreed to waive any and all rights of appeal or other rights of challenge of any kind whatsoever in respect of this Decision.*

2. Jurisdiction

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

3. Decision

- 3.1 With regards to Dr. Yerkes, the Tribunal is satisfied that the imposition of a two-year period of Ineligibility on Dr. Yerkes, starting on 21 May 2014 and so expiring at midnight on 20 May 2016, is consistent with Articles 9 and 10 of the EAD Rules.
- 3.2 Furthermore, the Tribunal is of the opinion that Dr. Yerkes has timely admitted the rule violation, and the period of Ineligibility is therefore deemed to have started on the date of the violation, 21 May 2014, in accordance with Article 10.8.2 of the EAD Rules. In line with a previous decision by the Court of Arbitration for Sport (CAS) (CAS 2010/A/2107, Oliveira v USADA, award dated 6 December 2010, para 9.56), the Tribunal further finds that the back-dating is not precluded by the last clause of Article 10.8.2 of the EAD Rules insofar as as a result of the Provisional Suspension, Dr. Yerkes has already served more than nine months of Ineligibility prior to the date of this Decision, which may be added to the nearly seven months that he will serve after the date of this Decision for purposes of Article 10.8.2.
- 3.3 Finally, the Tribunal accepts that given the specific circumstances of the case at hand no fine or costs are imposed on Dr. Yerkes.
- 3.4 With regards to Mr. Mazzarella the Tribunal is also satisfied that the imposition of the consequences - as set out below - on Mr. Mazzarella is consistent with Articles 9 and 10 of the EAD Rules.
- 3.5 As noted above, the starting-point for a violation of Article 2.2 of the EAD Rules is the imposition of a two-year period of Ineligibility. However, that period may be reduced by up to 50% pursuant to Article 10.4.2 of the EAD Rules, where the person charged establishes that he bears No Significant Fault or

Negligence for the violation in question.

- 3.6 In applying the analysis set out by a previous CAS decision (CAS 2014/A/3591, Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v FEI, paras 238-241) the Tribunal is satisfied that the particular facts of this case as set out above justify acceptance of Mr. Mazzearella's plea of No Significant Fault or Negligence and a consequent reduction of his period of Ineligibility to nineteen (19) months.
- 3.7 The Tribunal further decides to give credit for the period of Provisional Suspension served by Mr. Mazzearella, and finds that the prerequisites of Article 10.8 of the EAD Rules are met. The period of Ineligibility of Mr. Mazzearella is therefore back-dated to the date of the violation, i.e. 21 May 2014. For the reasons set out above, such back-dating is not precluded by the last clause of Article 10.8.2 of the EAD Rules, because the more than nine months of Provisional Suspension already served by Mr. Mazzearella prior to the date of this Decision and the nearly two further months that he will serve after the date of this Decision together add up eleven (11) months, which is more than half of the total period of Ineligibility nineteen (19) months.
- 3.8 The Tribunal further accepts that a fine of five thousand Swiss Francs (CHF 5,000) is adequate taking into account the circumstances of the case at hand.
- 3.9 The Tribunal has also taken note that the Parties agreed that each party shall bear its own costs of these and all related proceedings, including the related CAS proceedings (CAS 2015/A/4120). The Tribunal however finds that it can only decide on costs in proceedings brought in front of the Tribunal; the Tribunal has no jurisdiction to decide on costs in other proceedings that might have been opened by the Parties, i.e. CAS proceedings.

4. Disqualification

- 4.1 In accordance with Article 9 and Article 10.7 of the EAD Rules, all competitive results obtained by the Horse from 21 May 2014 to the date of Provisional Suspension of the Horse (on 29 September 2014) are disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

5. Sanctions

- 5.1 As a consequence of the foregoing, the Tribunal decides to impose the following sanctions on Mr. Mazzearella and Dr. Yerkes, in accordance with Article 169 of the GRs and Articles

2.2 and 10 of the EAD Rules:

- 1) In accordance with Article 10.2 of the EAD Rules Dr. Yerkes shall be suspended for a period of **two (2) years** for the present rule violation. In accordance with Article 10.8.2 of the EAD Rules the period of Ineligibility shall start on 21 May 2014. Therefore, Dr. Yerkes will be ineligible **through 20 May 2016**.
 - 2) In accordance with Articles 10.2 and 10.4.2 of the EAD Rules Mr. Mazzarella shall be suspended for a period of **nineteen (19) months** for the present rule violation. In accordance with Article 10.8.2 of the EAD Rules the period of Ineligibility shall start on 21 May 2014. Therefore, Mr. Mazzarella will be ineligible **through 20 December 2015**.
 - 3) No fine shall be imposed on Dr. Yerkes.
 - 4) Mr. Mazzarella is fined **five thousand Swiss Francs (CHF 5'000,-)**.
 - 5) The Parties shall bear their own legal costs.
- 5.2 In accordance with Article 10.9.1 of the EAD Rules, during their respective periods of Ineligibility neither Dr. Yerkes nor Mr. Mazzarella may participate in any capacity at an Event, or in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity at an Event or in a competition authorised or organised by any international or national-level Event organisation. In the event this prohibition on participation during Ineligibility is violated, the consequences set out in Article 10.9.2 of the EAD Rules will apply.
- 5.3 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the affected parties.
- 5.4 The Parties have waived any right of appeal or challenge that he/it might otherwise have to this Decision, including such right of appeal pursuant to Article 12 of the EAD Rules

IV. DECISION TO BE FORWARDED TO:

- a. The persons sanctioned: Yes**
- b. The Presidents of the NFs of the persons 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 'Henrik Arle', is centered on the page. The signature is fluid and cursive, with a large initial 'H' and 'A'.

THE CHAIR, Mr. Henrik Arle