



DECISION of the FEI TRIBUNAL

dated 16 November 2015

Positive Anti-Doping Case No.: 2014/BS07

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

PR/NF/ID: Mr. Mariano Ossa/ARG/10002163

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

Date: 6 – 10 August 2014

Prohibited Substance: Stanozolol

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. Person Responsible: Mr. Mariano Ossa

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."

III. 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 UP DATE 2 (the "Horse") participated at the CSI3*, in San Giovanni in Marignano, Italy, from 6 to 10 August 2014 (the "Event"), in the discipline of Jumping. The Horse was ridden by Mr. Mariano Ossa 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 9 August 2014.

- 1.3 Analysis of urine and blood sample no. 5531993 taken from the Horse at the Event was performed at the FEI approved laboratory, the UKAS Testing Laboratory, LGC, Fordham, United Kingdom ("LGC"). The analysis of the urine and blood sample revealed the presence of Stanozolol.
- 1.4 Stanozolol is an anabolic steroid which promotes muscle mass. Stanozolol is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "Prohibited Substances List"). Therefore, the positive finding for Stanozolol in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Proceedings

- 2.1 On 29 September 2014, the FEI Legal Department officially notified the PR, through the Federacion Ecuestre Argentina ("ARG-NF"), of the presence of the Prohibited Substance 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, Mr. Fabio Mazzarella that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two months, from the date of Notification, i.e. 29 September 2014, until 28 November 2014. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. Submissions by PR

- 3.1 On 3 October 2014, the PR submitted two statements by the Horse's veterinarian, Dr. William H. Yerkes, VMD, MRCVS. In his statements Dr. Yerkes explained that, as he had "felt from his experience" that the Horse was suffering from an "undiagnosed" kidney or liver condition, he had treated the Horse on 21 May 2014 in Wellington, USA, with a combination of intramuscular Stanozolol and intravenous Choline, Inositol and Methionine. Further that he knew that Stanozolol was a Banned Substance on the FEI Prohibited Substances List.

4. Preliminary Decision

- 4.1 During the Preliminary Hearing of 3 October 2014, Dr. Yerkes further clarified that prior to having treated the Horse, Mr. Mazzarella had not informed him that it was subject to FEI testing.

That on the other hand he had not informed Mr. Mazzarella of the details of the treatment with Stanozolol, as he had treated the Horse with what he had considered to be appropriate. Dr. Yerkes further stated that in his opinion the detection time for Stanozolol was about 90 days.

- 4.2 The PR explained that he was a professional rider, and that Mr. Mazzarella had requested him to ride his horses, including the Horse, during the Event, as Mr. Mazzarella himself had no longer been able to do so, since he had broken his clavicle during an event on 2 August 2014. Moreover, the PR stated that on 3 August 2014, and prior to requesting the ARG-NF to enter him for the Event, he had asked Mr. Mazzarella to confirm to him that his horses, including the Horse, were sound and not undergoing any medical treatments. In this respect, the PR provided a document including the written request and the written confirmation of Mr. Mazzarella that his horses had been sound and did not undergo any medical treatment. In addition, during the Preliminary Hearing Mr. Mazzarella confirmed that the PR had inquired with him about the status of the Horse.
- 4.3 The PR therefore argued that he bore No Fault or Negligence for the positive finding, as he had done everything possible in his capacity as professional rider, and further that he had been totally unaware that he had been riding a horse which had a Banned Substance in it's system. As a result, he therefore requested the lifting of the Provisional Suspension in accordance with Article 7.4.4 (ii) of the EAD Rules, and in order to allow him to compete in the Final of the Italian Championships of young horses in Arezzo, Italy, on the weekend of 11 to 12 October 2014.
- 4.4 During the Preliminary Hearing, and with regards to the source of the Banned Substance, the FEI argued that according to the USEF Equine Drugs and Medications Guidelines - the detection time for Stanozolol had been recorded as being 47 days, and that therefore the Stanozolol allegedly injected to the Horse on 21 May 2014 could no longer be detected at the time of the Event, i.e. two and a half months after the alleged treatment. That the PR had therefore not demonstrated how the Banned Substance had entered the Horse's system.
- 4.5 On 7 October 2014, the Preliminary Hearing Panel, having considered the written and oral explanations available at the time, decided not to lift the Provisional Suspension and to maintain it.

5. Further submissions by the PR

- 5.1 On 20 October 2014, the PR provided a statement by Mr. Mazzarella. Mr. Mazzarella explained that in the first week of July, he himself had administered another dose of the drug "Stargate", containing Stanozolol, to the Horse, in order to extend the effects

of the drug administered earlier by Dr. Yerkes.

- 5.2 Together with his submission the PR, in accordance with Article 7.4.4 of the Equine Anti-Doping Rules ("EAD Rules") submitted a petition to the FEI Tribunal for another Preliminary Hearing.

6. Submission by the FEI

- 6.1 On 7 November 2014, the FEI provided a Response to the supplemental explanation of the PR. Together with its Response the FEI provided a statement by Ms. Caterina Termine, Veterinary Advisor to the FEI. Ms. Termine explained that according to information found online, "Stargate" contained 50 mg of Stanozolol per ampoule. Further, that she believed that it had been possible for the Horse to test positive on the day of sampling following two administrations of Stanozolol in May and early July, assuming however that therapeutic doses of the drug had been administered. That known detection times published for intramuscular administration of Stanozolol would range from between 24 and 29 days. That however a longer withdrawal time had to be expected if indeed the Horse had been suffering from liver and kidney disease at the time of Stanozolol administration. Ms. Termine highlighted that it was highly questionable veterinary practice to treat a horse with a Banned Substance such as an anabolic steroid, even more so as apparently no clear diagnosis had been made. That generally there was no justification to use anabolic steroids for therapeutic reasons with respect to the practice of evidence based veterinary medicine.
- 6.2 More specifically, the FEI submitted that:
 - a) the PR had possibly established the source of the Prohibited Substance, provided that – as explained by Ms. Termine – therapeutic doses had been administered. That the explanations were however very vague, i.e. the PR had not provided specific details regarding the timing of the administration, or the dose applied. Furthermore that as the PR had not produced the FEI Medication Logbook for the Horse, apart from the word of the owner there was no evidence for the alleged administration of either treatment.
 - b) the PR's submissions did not contain anything that would allow the FEI Tribunal to determine that he bears No Fault or Negligence or No Significant Fault or Negligence for the rule violation. Further that the Preliminary Hearing Panel had already held in its Preliminary Decision that under Article 118.3 GRs, as rider of the Horse at the Event, the PR was the Person Responsible for the Horse. That the Preliminary Hearing Panel had further found that under the EAD Rules, riders could not transfer their responsibilities to another person, such as the owner of the Horse, even if this other person accepted acquiring the responsibilities. That it was established FEI Tribunal jurisdiction

that the Person Responsible was responsible for its support personnel and the treatments given to the Horse, and that the actions of a third party which the PR had relied upon in the preparation of the competition or the competition itself were imputable to the PR. That lastly it was not sufficient for the PR to only ask the owner whether the Horse was sound and free of medical treatments in order to fulfil his duty to ensure that the Horse was free of Prohibited Substances, and that in his supplemental submission the PR had not addressed that question any further.

- c) even if the explanations provided by the PR would be considered as leading to a No Significant Fault or Negligence finding – which the FEI did not consider to be the case – the potential period of Ineligibility could only be reduced to 50 %, i.e. to a 1 year period of Ineligibility. That therefore, and in light of the fact that the Provisional Suspension had only been imposed on 29 September 2014, the period of time of Provisional Suspension served so far was too short to justify the lifting of the Provisional Suspension.

- 6.3 The FEI therefore requested that the request for another Preliminary Hearing had to be rejected, and the Provisional Suspension to be maintained.

7. Further proceedings

- 7.1 On 12 November 2014, the Preliminary Hearing Panel decided that the prerequisites for another Preliminary Hearing under Articles 7.4.2 and 7.4.4 of the EAD Rules had not been met at that time. The Preliminary Hearing Panel held that the PR had not established the source of the positive finding, and that furthermore there was no room for a claim of No (Significant) Fault or No (Significant) Negligence for the Rule violation. Specifically the Preliminary Hearing Panel held that whereas it was the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any stage, the PR had not established that he had fulfilled the duty of care expected of him as a rider, as apart from asking the owner whether the Horse was sound and free of medical treatments, he had not undertaken any other measures to avoid that any Prohibited Substances entered the Horse's system.
- 7.2 The Tribunal understands that in the following, proceedings against Mr. Mazzarella and Dr. Yerkes have been opened by the FEI, for alleged violations of Article 2.2 of the EAD Rules.
- 7.3 On 21 September 2015, the PR submitted a petition to the FEI Tribunal for another Preliminary Hearing, in accordance with Article 7.4.4 of the EAD Rules.

- 7.4 On 2 October 2015, the FEI provided a Response to the PR's request for a New Preliminary Hearing. The FEI argued that the PR had not submitted any "new evidence" in the meaning of Article 7.4.4 of the EAD Rules. Furthermore, that it was of the opinion that the prerequisites under Article 7.4.2 of the EAD Rules were not fulfilled, and that the FEI maintained its position as expressed earlier. More specifically, that in the opinion of the FEI the only "new" fact the PR had submitted was that the Horse had been stabled in the stables of the Real Polo Club de Barcelona in the period between 5 May and 24 July 2014. That the PR's argument that because he himself had been in a different place during that time period, and that he had therefore not been in a position to administer the Stanazolol to the Horse, was however irrelevant, as he had been charged with an Article 2.1 violation, i.e. the presence of a Banned Substance in the Horse's system, and not with a violation under Article 2.2 of the EAD Rules, i.e. the administration of a Banned Substance to the Horse.
- 7.5 With regards to the PR's claim that he bore No Fault or Negligence for the Rule violation in the meaning of Article 10.4 of the EAD Rules, the FEI argued that the PR's submission of 21 September 2015 did not contain a single element that would allow a different conclusion as the Preliminary Hearing Panel had found in its Preliminary Decision of 12 November 2014, i.e. that the PR had not established that he had fulfilled the duty of care expected of him as a rider.
- 7.6 With respect to the PR's claim that exceptional circumstances existed in the case at hand, the FEI argued that even if one were to acknowledge that the change of riders, i.e. that the PR had been requested on a rather short notice – due to an unforeseen accident by the owner – to replace the owner and ride his horses, amongst them the Horse there was nothing exceptional about that, as accidents and unforeseen circumstances happen every day and plans needed to be adapted accordingly. That furthermore in certain disciplines, e.g. Endurance, and in certain countries, it was a standard routine for horses to be allocated to a rider only on a very short notice. That in this respect it was however long-standing FEI Tribunal jurisdiction in those cases that the rider remained the Person Responsible for any anti-doping rule violation, and that – in order to benefit from any reduction or elimination of the otherwise applicable sanction – it was not sufficient for him or her to claim lack of contact, knowledge and interaction with the horse in question, in order to establish exceptional circumstances, or otherwise No (Significant) Fault or Negligence. That furthermore, in the opinion of the FEI, it was for the PR to decide with whom he wished to work and collaborate, in whom he had trust, and under which circumstances, i.e. on short notice.
- 7.7 Finally, the FEI argued that it did not agree that the PR had provided substantial assistance under Article 10.4.3 of the EAD Rules – at that stage of the proceedings –, since the only conduct which could

potentially be considered as "assistance" were statements of the owner and the veterinarian of the Horse provided by the PR in the course of the proceedings against himself.

- 7.8 The FEI therefore requested that the PR's request for another Preliminary Hearing be rejected and the Provisional Suspension be maintained.
- 7.9 On 7 October 2015, in accordance with Article 7.4.4 of the EAD Rules, the Preliminary Hearing Panel found that the prerequisites for another Preliminary Hearing under Articles 7.4.2 and 7.4.4 of the EAD Rules had not been met.
- 7.10 The Tribunal understands that in the following, proceedings against Mr. Mazzarella and Dr. Yerkes have been finalized by FEI Tribunal Decision of 20 October 2015. In the decision of 20 October 2015 the competitive results obtained by the Horse from 21 May to the date of the Provisional Suspension of the Horse have been disqualified.

8. Agreement by the Parties

- 8.1 On 2 November 2015, the FEI informed the Tribunal that the FEI and the PR (together referred to as the "Parties") had discussed a potential resolution of the case at hand, in accordance with Article 8.1.5 of the EAD Rules, and submitted the following for consideration and approval to the Tribunal:

The FEI had opened charges against Mr Mariano Ossa for breach of Article 2.1 of the EAD Rules, based on the presence of Stanazolol in samples collected from a horse called UP DATE 2 that he was riding at an event in Italy in August 2014. That case has been given the reference 'UP DATE 2, Case 2014/BS07'.

The FEI subsequently brought two further, separate but related cases before the FEI Tribunal, charging each of Mr Fabio Mazzarella (the owner of UP DATE 2) and Dr William Yerkes (the veterinarian of UP DATE 2) separately with the use of a Banned Substance, in violation of Article 2.2 of the EAD Rules, namely the administration of Stanazolol to UP DATE 2. The FEI applied to have those two cases consolidated with the case of Mr. Ossa, and the FEI Tribunal Chair referred that application (which was contested by counsel for Mr Mazzarella and Dr Yerkes) to the hearing panel appointed for Mr Ossa's case, for determination.

Before the hearing panel appointed for Mr Ossa's case could hear the application, however, Mr Mazzarella applied for the removal of the FEI Tribunal Chair and the three members of the Ossa hearing panel from any involvement in his case, and Dr Yerkes joined in that application on his own behalf. The FEI Tribunal

Chair denied the application with respect to the three Ossa hearing panel members on 5 June 2015, but Mr Mazzarella appealed that decision to the CAS. Dr Yerkes intervened in support of that appeal. In the following, the respective parties have agreed upon a potential resolution of the two cases, in accordance with Article 8.1.5 of the EAD Rules, and have submitted the proposal to the hearing panel appointed for the case of Mr Ossa. The hearing panel appointed for the case of Mr Ossa approved the consequences proposed (a two year ban for Dr Yerkes, and a 19 month ban for Mr Mazzarella, a fine of CHF 5,000, and disqualification of the horse's results during the relevant period) in its decision of 20 October 2015.

Upon issuance of the above decision, the appeal to the CAS was withdrawn by Mr Mazzarella, and the FEI entered into settlement negotiations with Mr Ossa.

As result of the negotiations, Mr Ossa has accepted the rule violation charged with, i.e. an Article 2.1 EAD Rules violation, and has further accepted the following sanctions, in accordance with Article 8.1.5 of the EAD Rules:

- *A period of Ineligibility of 24 months*
- *A suspension of 5 months of the above period of Ineligibility, due to substantial assistance provided by Mr Ossa in accordance with Article 10.4.3 of the EAD Rules.*
- *The period of ineligibility is deemed to have commenced on the day of sample collection, i.e. 9 August 2014, and will therefore end on 8 March 2016 (see Article 10.8.1 of the EAD Rules).*
- *A fine of CHF 2.000,- and costs of CHF 1.000,-*

9. FEI submission

- 9.1 On 4 November 2015, upon request by the Tribunal, the FEI explained that insofar as it had been the PR who had provided both the statements by Dr. Yerkes and Mr. Mazzarella which – ultimately – had lead to the imposition of substantial sanctions against Dr. Yerkes and Mr. Mazzarella (2 years for Dr. Yerkes and 19 months for Mr. Mazzarella), the FEI submitted that - as a result - the PR could be considered as having provided Substantial Assistance in the meaning of Article 10.4.3 of the EAD Rules.

10. Jurisdiction

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

11. Decision

- 11.1 As set forth in Article 2.1.2 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample. 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 LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of Stanozolol in the sample taken from the Horse at the Event. Stanozolol is classified as a Banned Substance under the FEI Equine Prohibited Substances List. The Tribunal takes further note that the PR has accepted the rule violation charged with, i.e. an Article 2.1 EAD Rules violation.
- 11.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.
- 11.3 The Tribunal is satisfied that the imposition of a two-year period of Ineligibility on the PR, starting on 9 August 2014, i.e. the day of sample collection, is consistent with Article 10 of the EAD Rules.
- 11.4 Furthermore, the Tribunal is of the opinion that there have been substantial delays in the hearing process not attributable to the PR. In this respect, the Tribunal takes note that essentially, the PR had made his last submission on the merits at the beginning of October 2014. In accordance with Article 10.8.1 of the EAD Rules, the Tribunal therefore agrees that the period of Ineligibility shall start as early as the date of Sample collection.
- 11.5 The Tribunal further takes note that the Parties agreed on a suspension of five (5) months of the above period of Ineligibility, due to substantial assistance provided by the PR in accordance with Article 10.4.3 of the EAD Rules. The Tribunal understands that with the assistance of the PR the proceedings against the owner of the Horse as well as the veterinarian of the Horse had been opened. As a result of those proceedings both individuals had been found to have committed violations of the EAD Rules and sanctions have been imposed on them. The Tribunal is therefore satisfied that a suspension of five (5) months of the two-year period of Ineligibility is in line with Article 10.4.3 of the EAD Rules.
- 11.6 The Tribunal further accepts that a fine of two thousand Swiss Francs (CHF 2,000) and costs of one thousand Swiss Francs (CHF 1,000) are adequate taking into account the circumstances of the

case at hand.

12. Disqualification

- 12.1 The results of the Horse – PR combination have already been disqualified by Tribunal Decision of 20 October 2015.

13. Sanctions

- 13.1 As a consequence of the foregoing, the Tribunal decides to impose the following sanctions on the PR, in accordance with Article 169 of the GRs and Articles 2.1 and 10 of the EAD Rules:
- 1) In accordance with Article 10.2 of the EAD Rules the PR shall be suspended for a period of **two (2) years** for the present rule violation, starting on 9 August 2014. A suspension of five (5) months of the period of Ineligibility shall apply. Therefore, the PR will be ineligible **through 8 March 2016**.
 - 2) The PR is fined **two thousand Swiss Francs (CHF 2'000,-)**.
 - 3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the legal costs of the judicial procedure.
- 13.2 In accordance with Article 10.9.1 of the EAD Rules, during his period of Ineligibility the PR may not 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.
- 13.3 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the affected parties.
- 13.4 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.

IV. 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 'Henrik Arle', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke at the bottom.

THE CHAIR, Mr. Henrik Arle