



**DECISION of the FEI TRIBUNAL**

**dated 22 June 2015**

**Positive Controlled Medication Case No.:** 2014/CM03

**Horse:** TRA FLAMA

**FEI Passport No:** 103QH09/ESP

**Person Responsible:** Gillese De Villiers

**NF/ID:** RSA/10015318

**Event/ID:** WEG-E – Caen (FRA), 2014\_WEG\_0001\_E\_S\_01\_01

**Date:** 27 – 28 August 2014

**Prohibited Substances:** Phenylbutazone, Oxyphenbutazone

**I. COMPOSITION OF PANEL**

Mr. Henrik Arle, Chair  
Ms. Randi Haukebø, Panel Member  
Ms. Jane Mulcahy QC, 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 contained in the Case File and submitted at the oral hearing.
3. **Oral hearing:** 26 May 2015 – via telephone conference.

Present:

The FEI Tribunal Panel  
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Gillese De Villiers, PR  
Mr. Daniel Jacobus Dercksen, Legal Counsel

For the FEI:

Ms. Carolin Fischer, FEI Legal Counsel

### 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 29 April 2014 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 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 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: Gillese De Villiers

#### 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)."

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an *Event* without a valid *Veterinary Form*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 *ECM Rules* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *Rule* violation under Article 2.1."

## IV. DECISION

The below constitutes a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the Final Hearing. 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 TRA FLAMA (the "Horse") participated at the WEG-E in Caen, France, from 27 to 28 August 2014 (the "Event"), in the discipline of Endurance. The Horse was ridden by Ms. Gillese De Villiers 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 28 August 2014.
- 1.3 Analysis of urine and blood sample no. 5534133 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("LCH") in France by Pascal Maciejewski, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director. The analysis of the urine and blood sample revealed the presence of Phenylbutazone and Oxyphenbutazone.
- 1.4 Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and analgesic effect. Oxyphenbutazone is a metabolite of Phenylbutazone. Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substance under the FEI Equine Prohibited Substances List.
- 1.5 No request had been made to administer Phenylbutazone and Oxyphenbutazone to the Horse, and no Veterinary Form had been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Phenylbutazone and Oxyphenbutazone in the Horse's sample gives rise to a Controlled Medication Rule violation under the ECM Rules.
- 1.6 Under the ECM Rules, in cases of the presence of a Controlled Medication Substance, a PR may elect the so-called "Administrative Procedure" (also referred to as "Fast-Track"), provided that the prerequisites of Article 8.3.1 of the ECM Rules are fulfilled. However, the case at hand is not eligible for the Administrative Procedure insofar as the Event during which the Sample was taken from the Horse was part of the 2014 World Equestrian Games.

## **2. The Further Proceedings**

- 2.1 On 5 September 2014, the FEI officially notified the PR, through the South African Equestrian Federation ("RSA-NF"), and the owners of the Horse, through the Real Federacion Española ("ESP-NF"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated.

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

- 3.1 Together with the Notification Letter the PR and the owners 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 On 9 September 2014, the PR requested the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
- 3.3 From 12 to 22 September 2014, the B-Sample analysis was performed on the blood sample at the LGC Limited Laboratory, ("LGC") in the United Kingdom by Adam Clarke, Senior Scientist, under the supervision of K. Lubbock, Team Leader.
- 3.4 The B-Sample analysis confirmed the presence of Phenylbutazone and Oxyphenbutazone in the blood.
- 3.5 On 2 October 2014, the results of the B-Sample analysis were provided to the PR through the RSA-NF, and to the owners through the ESP-NF.

## **4. Further proceedings**

- 4.1 On 7 September 2014, the PR presented various questions to the FEI, amongst others related to samples apparently taken from the Horse during the Event, and the video surveillance performed during the Event.
- 4.2 On 10 September 2014, the FEI explained that it had not been involved in any sampling on arrival, and did therefore not have any results related to any such sampling. That Pre-arrival testing (PAT) had been available to all National Federations (NFs) whose horses competed at WEG, but that the FEI had not been involved in that sampling either. Furthermore, and in response to the PR's request to the FEI to analyse a blood sample taken from the Horse by the South African team veterinarian on 27 August 2014, the FEI explained that insofar as it had not been involved in the sampling process, the FEI did not have any details regarding the sampling procedure followed, and the chain of custody. That therefore the respective sample did not have the necessary integrity, as would be required to lead to any meaningful results. That consequently the PR's request had to be denied. The FEI further explained that according to FEI policies, the video footage of the Event would not be shared with riders; that however the footage

would be reviewed by the independent Equestrian Community Integrity Unit (ECIU).

## **5. Written submission by the PR**

- 5.1 On 22 October 2014, the PR provided her explanations for the positive finding. Together with her explanations the PR submitted various documents, as well as several statements by various individuals, testifying amongst others to her good horsemanship and impeccable integrity. Amongst those documents the PR submitted an unsigned expert report allegedly issued by a representative of a South African laboratory who, according to the PR, had reviewed the documentation regarding the positive finding. The report contained the statement that Phenylbutazone was extensively used for the treatment of horses for lameness and pain, and that many preparations and products existed, either for intravenous administration or for oral administration. That for many years, Oxyphenbutazone had no longer been commercially available as drug preparation, and that it was the most well-known, prominent metabolite of Phenylbutazone. Furthermore, and assuming that the likely administration of Phenylbutazone had been by either oral or intravenous route, the concentration of the Prohibited Substances detected in the Horse's sample would allow the conclusion that it was highly likely that administration had taken place between 8 to 32 hours prior to sampling. That administration of more than 8 hours prior to sampling was very likely as otherwise the concentration of Phenylbutazone would be much higher and the relative proportion of Oxyphenbutazone was expected to be much lower. Furthermore, that administration of more than 40 hours prior to sampling was very unlikely provided a normal, typically prescribed therapeutic dose of Phenylbutazone had been administered.
- 5.2 The PR further provided a statement by Dr. JW Eksteen, team veterinarian at the WEG. Dr. Eksteen explained that he had taken blood from the Horse on 27 August 2014, at around 11 am. That the blood profile had shown an elevated white blood cell count, which in his opinion was normal due to the elevated stress caused by traveling. That other horses from the South African team had had similar blood profiles.
- 5.3 Moreover, the PR provided a Polygraph Examination Report according to which no deception had been indicated with regards to the answers provided by her, specifically her denial in response to the question whether she had known that the Horse had carried Prohibited Substances in its system during the Event, and whether she had administered Prohibited Substances to the Horse during the Event.
- 5.4 In essence the PR submitted that:
  - a) she had been participating in the sport for the last 25 years, had completed 18 000 km, and that for the past 8 years she had been regularly a member of the South African National team. Further that the Event was the fourth World Championship in which she had

participated as a member of the South African team, and that only for one of those events she had been in a position to compete on her own horse. That she had never been charged with any breaches of any rules of the sport. Moreover, that she would only compete to finish competitions, and not to win, and that the Event had been her first competition where she had not finished. Finally, that she would always prioritize the health of the horses.

- b) she accepted that she was the PR in accordance with FEI Rules. That however the intention behind the modified Endurance Rules that had come into force on 1 August 2014 had been to shift the responsibility from the rider to the trainer, at least until the beginning of the competition, and that this had to be applicable in the case at hand. That in this context it had to be considered that both owners had requested full access during the Event to the Horse at all times, and that she herself had only seen the Horse for the first time on 25 August 2014. Furthermore, that the owners had signed a horse owner agreement with the RSA-NF by which – amongst others – they had declared that the Horse had not been administered any Prohibited Substances; and the respective contract would have been aimed to protect the Horse and the rider. She further explained that once she had received notice of the positive finding, one of the owners of the Horse had called her and had declared taking the entire responsibility. That however the owners had not been willing to sign a document drafted by her and thereby formally accepting liability, as they were afraid of potential legal claims against them.
- c) – since the testing process had taken a long time - she had only been able to witness the urine (and not the blood) sampling, as she had felt obliged to join and help her teammates that were still out on the race track. That the owners had observed the entire sampling process, and had also signed the anti-doping control papers. That she herself could therefore not testify whether the correct sampling protocol had been followed.
- d) – with the financial support of a sponsor – she had leased the Horse for the Event from its two owners, who – together with a team – had solely taken care of the Horse's feeding and care, and who had also taken care of the grooming during the Competition. That she had however asked questions to the trainer, who had told her that he liked it "natural", and that therefore she had had no reasons not to trust him and the other team members with regards to administering Prohibited Substances. Finally, that due to long quarantine times, i.e. three months, for horses traveling from South Africa and the high costs related to it, South African riders generally opted to lease horses for events like the WEG.
- e) following the pre-ride examination the veterinarian in charge had changed the A motion of the Horse to a B motion, and that only upon this decision the Horse's owners had agreed for the PR to ride a slow pace of around 15km/h, whereas before they had insisted for her to go at a faster pace. That the owners had had a financial interest in

the Horse finishing the Competition, as the PR's sponsor had agreed to buy the Horse, provided it finished the Competition. That the Horse had however been vetted out for metabolic reasons after the second vet check, as its heart rate had still been at 70bpm, and that the Horse's pulse had been low at the original check. That following this decision at the vet check, her team veterinarian had asked her whether the Horse had been given a painkiller, as this would typically raise a horse's pulse.

- f) following the notification of the present case she had been in contact with the owners on numerous occasions, and had asked them to provide their explanations for the positive finding. That the owners had however not been willing to provide any information. That she had also tried to obtain the video surveillance documentation of the Event, and that – as it had not been provided to her by either the FEI or the ECIU - her possibility to establish the cause of the positive finding had been minimized.
- g) the source of the Prohibited Substances was unknown, and that she had not administered any Prohibited Substances to the Horse during the Event. That it had not been possible for her to administer any Phenylbutazone to the Horse as in South Africa, the possession of that substance required a specific permit. That furthermore Oxyphenbutazone was not a recognised individual medication in South Africa, but was known to be a metabolite of Phenylbutazone. That – as determined by the representative of a South African laboratory – it was highly likely that administration had taken place between 8 to 32 hours prior to sampling. That however insofar as during the pre-ride examination, the Horse had been given a B motion, it was rather unlikely that the Prohibited Substances had already been present at that stage, and that it was more likely that they had only been administered to the Horse before the start of the Competition. Furthermore, that the evidence provided did show, on a balance of probability, that the Phenylbutazone must have entered the Horse's system via oral route through the Horse's evening meal on the day prior to the Competition. Moreover, the PR contended that the owners had had a motive to dope the Horse, insofar as they had changed the race plan to a slower pace, and that they had also increased the lease amount once it had turned out that the Horse would not be sold, since it had not finished the Competition.
- h) given the circumstances, it had not been possible for her to prevent the Phenylbutazone entering the Horse's system, and that she had therefore demonstrated that she did not bear any Significant Fault or Negligence as foreseen under Article 10.4 of the ECM Rules. That as mitigating factors it had to be taken into account that the case at hand was her first anti-doping rule violation, that she was not aiming for results but to finish competitions, and that she had a good reputation within the Equestrian Community.

## **6. Further proceedings**

- 6.1 On 23 October 2014, the owners of the Horse submitted a statement in the context of the positive finding. They explained that when the B-sample had confirmed the results of the A-sample, first they had suspected contamination, as the Horse had not been intentionally treated with Phenylbutazone prior to the Event, or the previous year, and not even since the Horse had been acquired in 2009. Moreover that they had been absent from the Horse's stable from 23 to 30 August 2014, and that a person called Mr. Carlos Jurado had taken care of the Horse during that time. That on the evening of 23 August 2014, another horse stabled together with the Horse, Al Hattal, had returned injured from a ride, that a veterinarian had been called to examine the horse Al Hattal. That the veterinarian had prescribed one envelop of eqzona with the active ingredient Phenylbutazone, for Al Hattal. That Mr. Jurado, when feeding the horses later that evening around 8 pm, had probably made a mistake, and had administered the product to the Horse, instead of to Al Hattal. That there had never been any intention for the Horse to be administered Phenylbutazone, and that given the circumstances, the rider, the owners and the trainer should be exonerated of any liability. Together with their statement the owners submitted a copy of the veterinary certificate for Al Hattal dated 23 August 2014, recommending 1 g of Phenylbutazone every 12 hours for 10 days.

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

- 7.1 On 24 February 2015, the FEI provided its Response to the written submissions by the PR.
- 7.2 In essence the FEI argued that:
- a) under FEI Rules and Regulations, in particular Article 118.3 of the GRs, it was the rider of the Horse during an Event who was considered as the Person Responsible for the Horse. That Article 118.3 of the GRs had not been modified in the context of the modifications of the Endurance Rules in August 2014, and therefore remained in place and applicable. That owners, trainers, veterinarians etc. might be considered as either Support Personnel, or additional Person Responsible. That this was however only possible based on concrete evidence that the respective individual had indeed at least been involved in causing the rule violation. That the PR's explanations however did not constitute such concrete evidence, but rather remained pure allegations and speculations. Furthermore, that the agreement between the horse owners and the RSA-NF could not release the PR from her responsibility for the positive finding, as this constituted an agreement only between the two parties to the agreement, and that the PR's responsibility as a rider and therefore for the positive finding could not be exonerated by any such contract.



- b) as Controlled Medication Substances, for which no valid Veterinary Form had been submitted, had been present in the Horse's A- and B-Sample taken at the Event, a violation of Article 2.1 of the ECM Rules had been established. With regards to the sampling process and the PR's claim that she had not been able to attend the entire sampling process, the FEI argued that, whereas it was possible for a PR to delegate attendance during the sampling process, the results of the sampling process would always be binding for the PR, whether or not he or she personally attended the process. That the PR therefore had to choose a representative that he or she fully trusted in, and had to make sure that that representative was fully aware of the sampling process, and – if any – raised any concerns or objections about the sampling process.
- c) where a Controlled Medication Substance had been found in a horse's sample, under the ECM Rules there was a presumption of guilt on the part of the PR, and that unless a PR was able to rebut this presumption, according to Article 10.2 of the ECM Rules, a period of Ineligibility commensurate with the seriousness of the offence, taking into account the underlying objectives and rationale of the ECM Rules and the FEI Medication Code, as well as principle of fair play, had to be imposed on the PR. That the period of Ineligibility foreseen under Article 10.2 of the ECM Rules was six (6) months, subject to any elimination or reduction as provided in Article 10.4 of the ECM Rules, or increased as provided in Article 10.5 of the ECM Rules. That however, in order for any reduction to be applied, the PR had to establish (i) how the Controlled Medication Substance had entered the Horse's system, and (ii) that she bore No Fault or Negligence for that occurrence, i.e. that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the Horse (or the Horse's system otherwise contained) a Controlled Medication Substance.
- d) the PR's explanation regarding the source of the positive finding - namely that the Prohibited Substances must have entered the Horse's system by oral route, through the Horse's evening meal on the day before the competition - had to be considered as being of pure speculative nature, as the PR had not submitted any evidence in this context. The FEI further explained that the video documentation of the Event had been reviewed by the ECIU in the meantime, but had not revealed anything suspicious or anything pointing to the fact that the Horse had been administered, by any means, any Prohibited Substances. Furthermore, the FEI took the position that neither the explanations provided by the owners, nor those provided by the PR established the source of the positive finding. The FEI argued that it was not possible - from a scientific point of view -, that administration several days before the sampling had caused the positive finding. It explained in this respect that upon request following receipt of the explanations, LCH had informed the FEI of the following estimates in the A-Sample: urine: Phenylbutazone 19 µg/ml and Oxyphenbutazone 56 µg/ml; blood: Phenylbutazone 16 µg/ml and Oxyphenbutazone 11 µg/ml, and that LGC had provided the figure of 29.25 as estimate for

the Phenylbutazone concentration in the B-Sample. That furthermore, it had requested Dr. Stuart Paine, BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS, to review the explanations received by both the PR and the owners, as well as the relevant data packages, and the estimates provided by the two laboratories. That Dr. Paine, having evaluated the information provided, had come to the conclusion that administration had to have taken place 5-10 hours before sampling, and that he had advised that neither the PR's explanation nor the explanation by the owners would explain the source of the positive finding.

- e) the PR's argument that it had been impossible for her to administer the Prohibited Substance(s) to the Horse as their possession either required a licence (Phenylbutazone) and as Oxyphenbutazone was not recognised as individual medication in South Africa, was irrelevant in the case at hand, insofar as the alleged rule violation was not the administration of a Prohibited Substance, but the presence of Prohibited Substances.
- f) since the PR had not provided any other explanation for the presence of the Prohibited Substances, the FEI argued that she had not established how the Phenylbutazone and Oxyphenbutazone had entered the Horse's system. That therefore no elimination or reduction under Article 10.4 of the ECM Rules was applicable since the PR had not fulfilled the prerequisite for the application of that rule.

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

8.1 On 18 March 2015, the PR provided her Rebuttal submission. In essence the PR further submitted that:

- a) she accepted to be the PR, and that she further accepted the positive finding for Phenylbutazone and Oxyphenbutazone. That she further accepted that a Controlled Medication Rule violation had therefore been established, and that she acknowledged to be held liable for the Rule violation in accordance with Article 2.1.1 of the ECM Rules.
- b) she acknowledged that initially, she had speculated on how the Phenylbutazone had been administered to the Horse, but that following the statement by the owners there was a clear answer to that question. That Dr. Eksteen's, and not Dr. Paine's findings had to be taken into consideration, i.e. administration of the substance in the time frame from 8 to 32 hours prior to sampling. The PR argued in this context that Dr. Eksteen's findings were in alignment with the statement of the owners, and also with the FEI List of detection times.
- c) she bore No Significant Fault or Negligence for the Rule violation, as she had "implemented any/all preventive measures", but had not been able to thwart the injustice done to her. That she had not acted recklessly at all, and that she had naively relied on the measures of the RSA-NF, i.e. the agreement with the owners, assuming that this

agreement would protect her. Furthermore, that she had requested Dr. Eksteen to perform blood tests on the Horse on his own accord, and that he had decided on his own volition what type of test he had done. That many factors in her case were similar to a previous FEI case (Case 2011/CM07 XIME, Final Tribunal Decision dated 20 December 2013), where those factors had been taken into consideration by the Panel in rendering a decision. Finally, that the unique circumstances, and merits of each case had to be taken into consideration.

- d) for a period of three (3) months (from 2 November 2014 to 6 February 2015) she had refrained from partaking in competitions, including crucial rides, such as the South African Long distance Championships, and that this period of voluntary suspension had to be taken into account when deciding the period of Ineligibility.
- e) she requested that no fine or legal costs be imposed on her, as her income had ceased due to the impact of the present case on her good name, and as she was completely dependent on her endurance horse sales. In addition, that her participation in the WEG had cost her R89000, and the legal costs acquired to clear her name had amounted to R23000. The PR further submitted a bank account balance statement, and a statement by her accountant confirming that the PR's sole income was horse sales, and that no horse had been sold since March 2014.

## **9. Final Hearing**

- 9.1 A Hearing took place on 26 May 2015 via telephone conference.
- 9.2 During the Final Hearing the PR explained that following the statement by the owners, she now only relied on the owners' explanations with regards to the question as to how the Prohibited Substances had entered the Horse's body. That in her opinion, and in light of the admission by the owners of the Horse regarding the administration of the Phenylbutazone, there had been no need for her to investigate further into the source of the Prohibited Substances. That however she did not know, or have any relation to Mr. Jurado. She further argued that insofar as the admission of the owners was the only evidence with regards to the source of the Prohibited Substances, it had to be accepted in order to lead to a fair, just and equitable judgement. Furthermore, that the Polygraph Examination and the fact that the possession of Phenylbutazone was illegal in South Africa were corroborating evidence for the question how the Phenylbutazone had entered the Horse's system. Further that she had done everything a reasonable person would do in order to not be negligent, specifically as she had required the owners to sign the agreement with the RSA-NF, and as she had asked the team veterinarian to take a blood test on the Horse on his own accord. That, as a result, she had succeeded to rebut the presumption that she was negligent. Furthermore, that also the special circumstances of the case, i.e. that it was not possible for South African riders to compete with their own horses outside of South Africa, and that

the circumstances for South African riders where quite different to those of any other riders competing on a borrowed horse, had to be taken into account. Finally, that whereas she accepted FEI Rules and Regulations, the strict liability principle in the ECM Rules was however to her great disadvantage, and that this principle would have been declared unconstitutional in Canada, the United States of America and in South Africa.

- 9.3 With regards to sanctions the PR referred to the fact that she had voluntarily suspended herself from 2 November 2014 to 6 February 2015, and argued that even though she had not confirmed her voluntary suspension in writing, the record would show that she had not competed during that period of time. Upon request by the FEI about her financial arrangement for her recent participation in two FEI events in Qatar and in South Africa, the PR explained that she had been sponsored for both events. That however she had already lost sponsors due to the case at hand.
- 9.4 During the Final Hearing the FEI argued that different country regulations and principles of criminal law were not applicable to the case at hand, and that the case at hand was regulated by sports law. Further that the strict liability concept – as established in the World Anti-Doping Code - had been well accepted in sports law all over the world, in particular when it came to anti-doping matters. That this concept had been adopted and implemented by the FEI for both its Human Anti-Doping Rules and for its Equine Anti-Doping Rules, including the ECM Rules. That furthermore it was irrelevant whether or not the strict liability principle would be considered as unconstitutional in criminal law in South Africa or other countries, as the case at hand was about disciplinary measures, to which the FEI's Rules and Regulations were applicable.
- 9.5 The FEI maintained its position that neither the owners' nor the PR's explanation would – from a scientific point of view - establish the positive finding. With regards to the PR's explanations the FEI maintained that they were too vague, based on pure speculation and not supported by any concrete evidence. With regards to the owners' explanations the FEI – relying on the advice by Dr. Paine - upheld its position that given the alleged time of administration and the allegedly dose administered, there was no scientifically sound explanation for the amounts as detected in the samples taken from the Horse at the Event. In this context the FEI further argued that the PR had been provided with the opportunity to challenge Dr. Paine's position, but had not made use of that opportunity. That therefore the explanations provided by and on behalf of the PR were not sufficient to satisfy the pre-requisite of Article 10.4 of the ECM Rules, and that as a result no reduction or elimination of the otherwise applicable sanction under Article 10.4 of the ECM Rules was possible. Furthermore, the FEI stated that whereas there might be special circumstances in the case at hand, the rules would leave little room for any those special circumstances to be considered. That

ultimately, under Article 2.1 of the ECM Rules, it was the PR's personal duty to ensure that no Prohibited Substances entered the Horse's system, despite the fact that a horse – as it was the case in the case at hand - had been borrowed, as it clearly followed from Article 118 of the GRs that also in cases of borrowed horses the rider remained the Person Responsible. Finally, the FEI argued that in order to benefit from any alleged period of voluntary suspension, the ECM Rules foresaw under Article 10.8.4 that the PR would have had to inform the FEI in writing of the voluntary suspension. That the PR had however not complied with this requirement, and that therefore any potential period of voluntary suspension could not be considered by the Tribunal.

## **10. Jurisdiction**

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

## **11. The Person Responsible**

- 11.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she had competed with the Horse at the Event.

## **12. The Decision**

- 12.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A- and B-Sample, provided there is no valid Veterinary Form. The Tribunal is satisfied that the laboratory reports relating to the A- and B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of LCH and LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone and Oxyphenbutazone in the blood sample, taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. The presence of Phenylbutazone and Oxyphenbutazone in a Horse's body during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 12.2 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 ECM Rules.
- 12.3 To start with the Tribunal has taken note of the PR's claim that the strict liability principle applicable under the EADCMRs was to her great disadvantage, and that such principle had allegedly been declared unconstitutional in several countries. The Tribunal however finds that it cannot consider various countries' laws or principles of criminal law, as it

has to decide the case at hand under FEI Rules and Regulations. Furthermore, unlike criminal law, the present case is governed by disciplinary law, for which different principles have been developed, amongst them the strict liability principle. The Tribunal further finds that – as outlined in the Scope of the EADCMRs – the EADCMRs, and therefore also the ECM Rules, apply to the FEI, each National Federation, and each Person Responsible and their Support Personnel, and therefore also to the PR in the case at hand.

- 12.4 As consequence of the strict liability principle, the PR - once an ECM Rule violation has been established by the FEI - has the burden of proving that he bears "No Fault or Negligence" for the rule violation as set forth in Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence", as set forth in Article 10.4.2 of the ECM Rules.
- 12.5 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.
- 12.6 To start with the Tribunal acknowledges the specific conditions under which the PR competed in the Event. The Tribunal further finds that the PR has taken a number of steps aimed at – in her view - avoiding a positive finding. The Tribunal however finds that in accordance with Article 10.4 of the ECM Rules, it is only in a position to decide whether or not the PR bore any (Significant) Negligence for the Rule violation provided that the PR establishes the pre-requisite of Article 10.4 of the ECM Rules, i.e. how the Prohibited Substances had entered the Horse's system.
- 12.7 Having taken into account the PR's explanations as well as the owners' statement and the FEI's position, the Tribunal however finds that the PR has not established how the Prohibited Substances had entered the Horse's system for various reasons. Firstly, the Tribunal finds that the owners' explanation does not constitute unquestionable proof of an administration of Phenylbutazone to the Horse by Mr. Jurado, but rather the possibility of such administration. This is even more the case as Mr. Jurado himself has not confirmed such administration by any means. The Tribunal further understands that according to Dr. Paine and the FEI, administration of Phenylbutazone on the day, at the dose and via the route as claimed by the owners would – from a scientific point of view - not have led to the amount of Phenylbutazone and Oxyphenbutazone detected in the A- and B-sample of the Horse. This has not been contested by the PR. As a result, the Tribunal finds that the PR has not established - by a balance of probability - how the Prohibited Substances entered the Horse's system.
- 12.8 The Tribunal therefore concludes that no reduction or elimination of the otherwise applicable period of Ineligibility under Article 10.4 of the ECM Rules is warranted.

- 12.9 In deciding the start date of the period of Ineligibility, the Tribunal takes note of the PR's claim that she had voluntarily suspended herself from competing from 2 November 2014 to 6 February 2015. The Tribunal however finds that no voluntary Provisional Suspension as set forth in Article 10.8.4 of the ECM had de facto been served by the PR, as the PR would have had to accept such voluntary Provisional Suspension in writing. Therefore the PR may not receive any credit for such period of voluntary Provisional Suspension.
- 12.10 The Tribunal takes further note of the PR's explanation with regards to her financial situation. The Tribunal, in deciding the sanctions imposed on the PR is considering the PR's financial situation and the specific circumstances of the case at hand.

### **13. Disqualification**

- 13.1 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 ECM Rules.

### **14. Sanctions**

- 14.1 Under the current ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance shall be commensurate with the seriousness of the offence, taking into account the underlying objectives and rationale of the ECM Rules and the FEI Medication Code, as well as the principles of fair play. Therefore the period of Ineligibility imposed on the PR shall be six (6) months, for first time offenders.
- 14.2 The FEI Tribunal imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **21 December 2015**.
  - 2) The PR is fined **five hundred** Swiss Francs (**CHF 500,-**).
  - 3) The PR shall bear the costs of the B-Sample analysis.
- 14.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity 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 authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by

any international or national-level Event organisation (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

14.4 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

14.5 In accordance with Article 12 of the ECM 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, appearing to read 'Henrik Arle', is written over a light blue rectangular background.

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**The Chair, Mr. Henrik Arle**