



DECISION of the FEI TRIBUNAL

dated 7 May 2015

Positive Controlled Medication Case No.: 2014/CM04

Horse: QALAO DES MERS

FEI Passport No: 103MQ19/FRA

Person Responsible: Maxime Livio

NF/ID: FRA/10011305

Event/ID: WEG-C, Caen (FRA), 2014_WEG_0001_C_S_01_01

Date: 27 – 31 August 2014

Prohibited Substance: Acepromazine (Hydroxyethylpromazine sulfoxide)

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 in the Case File, as also made available by and to the PR.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 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 Controlled Medication Rules ("ECM 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.

1. Person Responsible: Maxime Livio

2. 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."

ECM Rules Art. 9: "For cases other than those prosecuted under the Administrative Procedure, a violation of these *ECM Rules* in connection with a *Test* in a given *Competition* automatically leads to the *Disqualification* of the result of the *Person Responsible* and Horse combination obtained in that *Competition* with all resulting consequences, including forfeiture of any related medals, points and prizes. Where applicable, consequences to team are detailed in Article 11. Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or elimination shall under no circumstances eliminate the automatic Disqualification of Individual Results mandated by this Article 9."

ECM Rules Art. 10.1.1: "At the Olympic Games, Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games: An ECM Rule violation occurring during or in connection with an *Event* shall lead to *Disqualification* of all of the *Person Responsible's* individual results obtained in that *Event*, with any and all *Horses* with which the *Person Responsible* competed, with all consequences (and the

resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.”

ECM Rules Art. 11.1 “Unless otherwise provided in the FEI Regulations for Equestrian Events at the Olympic and Paralympic Games, the Consequences to teams set forth below will apply.

11.1.1 At the Olympic Games, Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games: If a member of a team is found to have committed a violation of these ECM Rules during an Event, the results of the *Person Responsible* will be *Disqualified* in all *Competitions* and the entire team *Disqualified*.

(...)”

IV. DECISION

The below constitutes 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 QALAO DES MERS (the “Horse”) participated at the WEG-C, in Caen, France, from 27 to 31 August 2014 (the “Event”), in the discipline of Eventing. The Horse was ridden by Mr. Maxime Livio who is the Person Responsible in accordance with Article 118.3 of the GRs (the “PR”).
- 1.2 Due to the results of the PR at the Event the French Eventing team obtained a qualification for the 2016 Olympic Games.
- 1.3 The Horse was selected for sampling on 29 August 2014, following the dressage test competition of the Eventing Discipline.
- 1.4 Analysis of urine and blood sample no. 5534357 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques (“LCH”) in France by Ms. Isabelle Pottier, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director. The analysis of the urine sample revealed the presence of Hydroxyethylpromazine sulfoxide.
- 1.5 Hydroxyethylpromazine sulfoxide is a metabolite of Acepromazine. Acepromazine is a Prohibited Substance under the FEI Equine Prohibited Substances List. Acepromazine is a tranquiliser with sedative effects and

is classified as Controlled Medication Substance under the FEI Equine Prohibited Substances List.

- 1.6 No request had been made to administer Acepromazine to the Horse, and no Veterinary Form had been provided by the PR for the use of the substance on the Horse. Therefore, the positive finding for Hydroxyethylpromazine sulfoxide in the Horse's sample gives rise to a Controlled Medication Rule violation under Article 2.1 of the ECM Rules.
- 1.7 Under the ECM Rules, in cases of the presence of Controlled Medication Substances, 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.
- 1.8 On 31 August 2014, the Horse was again submitted to sampling. The samples taken on 31 August 2014 did not contain any Prohibited Substances.

2. The Further Proceedings

- 2.1 On 5 September 2014, the FEI officially notified the PR, through the Federation Française d'Equitation ("FRA-NF"), and the owner of the Horse, of the presence of the Prohibited Substance 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 was also informed that he was 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 18 September 2014, the PR requested the B-Sample analysis to be performed in the same laboratory than the A-Sample analysis. Further, the PR requested that a representative attended the B-Sample analysis on his behalf.
- 3.3 Between 2 and 3 October 2014, the B-Sample analysis was performed on the urine sample, by Maëlle Bouscarel, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director. The representative of the PR, Dr. Paolo De Iuliis, veterinarian, witnessed the entire B-Sample analysis.
- 3.4 The B-Sample analysis results confirmed the presence of Hydroxyethylpromazine sulfoxide.

- 3.5 On 14 October 2014, the results of the B-Sample analysis were provided to the PR through the FRA-NF, and to the owner of the Horse.

4. Written submission by the PR

- 4.1 On 4 November 2014, the PR provided his explanations for the positive finding. Together with his explanations the PR submitted a copy of a press release issued by him following the positive finding, a statement by Dr. De Iuliis, veterinarian; a statement by Ms. Joelle Stafford, a volunteer of the Event, regarding stable security, and three anonymous letters allegedly received by him and his stable.
- 4.2 In his statement Dr. De Iuliis explained that Acepromazine could be administered via intramuscular route (starting to have an effect within 30 to 45 minutes), or intravenously (starting to have an effect within 15 minutes), or orally, and that sedation usually lasted for 1 to 4 hours, but that some horses might feel the effect for up to 6 hours. Dr. De Iullis estimated the concentration of Hydroxyethylpromazine sulfoxide in the B-Sample to be at between 15-20ng/ml. Further that according to most recent studies available, a concentration of Hydroxyethylpromazine sulfoxide of 20ng/ml would be compatible with an administration of a single dose of 0.15 mg/kg about 30 to 40 hours prior to sampling. That the usual dose for Acepromazine would consist of 0.15 mg/kg, but that the standard dose of Acepromazine was highly variable, depending upon the desired effect following administration. That an official detection time of 72 hours had been elaborated for Acepromazine by other horse racing authorities, but not published by the FEI. That therefore, at the moment when the Horse had entered the dressage test competition, the substance could not have had any calming effect anymore. Lastly, that the concentration of Hydroxyethylpromazine sulfoxide, which could be found in the Horse following administration of Acepromazine for sedating purposes, would have been ten times higher than the concentration of Acepromazine found in the sample at hand. Together with his statement Dr. De Iuliis submitted a document by the European Horserace Scientific Liaison Committee (the "EHSLC") listing detection times of substances, including Acepromazine (detection time of 72 hours, when administered orally at a dose of 0.15 mg/kg).
- 4.3 In her statement Ms. Stafford explained that at the beginning of the Event, despite an efficient security system and team, it had been possible to enter the stables without proper accreditation. That only once members of the press had alleged having entered the stable without sufficient accreditation, and had walked around the stables and taken photographs, accreditation control had been performed with more diligence (starting from Friday morning, i.e. 29 August 2014).
- 4.4 With regards to the three anonymous letters, the PR suggested that it followed from those letters that the positive finding might have potentially been the result of a malicious act against him, or his father, for various reasons. The PR has not provided any further details with regards to the anonymous letters, i.e. the date and the circumstances of

receipt.

- 4.5 In his press release the PR explained having had high expectations for the Event, both for the individual as for the team competition. That therefore he had been certain that the Horse would be submitted to anti-doping control, and that he would therefore not have taken any risk. Furthermore that he condemned doping, a conduct which was not compatible with the ethical approach taken by him towards the sport. That he had not administered any Prohibited Substances to the Horse, and could only think of a malicious act being the source of the positive finding. Lastly, that he had participated in several clean sport seminars and activities organised by the FRA-NF, the last of which had taken place a few weeks prior to the Event, in form of a seminar about feed and supplements.
- 4.6 In essence the PR submitted that:
- a) he had been ranked number one in France and seventeenth (17th) in the world ranking list prior to the Event. Further that he had competed on a high level for the past ten years, that he competed in over one hundred and fifty (150) competitions on an annual basis, and that previously his horses had never tested positive for any Banned Substances.
 - b) he had not administered any Prohibited Substances to the Horse. That in light of the concentration found in the B Sample, the Acepromazine – assuming that it had been administered at the standard dose of 0.15 mg/kg – would have been administered about 30 to 40 hours prior to the sampling, i.e. during the night of Wednesday 27 to Thursday 28 August 2014. That during this period of time the stables were closed and that therefore he had no access to the stables. Specifically that riders and their teams were not allowed to access boxes from 11 pm to 6 am, and that therefore it had been physically impossible for him and any members of his team to administer the substance to the Horse. That Event's organisation strictly regulated the access of riders and their team to the stables. That it however appeared that no surveillance cameras had been installed, which would have made it impossible for the security service - which had been restricted - to counteract any possible intrusion. That access control had been very succinct, at the very least, and that over five hundred (500) accredited persons had access to the stables during the Event. Finally, that Acepromazine was available in different forms, such as appetizing granules or powder, and could therefore have been easily poured into the horse's manger, even more as the manger had been continuously full, in order to allow the Horse to consume its daily rations slowly throughout the day and at night. That further, the fact that the samples taken from the Horse on 31 August 2014 were negative, would corroborate the supposed time of administration.
 - c) he therefore believed that an unknown person had administered the Acepromazine to the Horse. That the evidence produced in this respect, including but not limited to the anonymous letters (as

outlined further below), supported his hypothesis of a malicious act, or at least justified a finding of no kind of fault or negligence for the rule violation either by him or his team. That he had also been subject to envy due to his stable's competitive and financial success, and that the Event would have presented a great opportunity for a malevolent person to discredit him and his stables. That accordingly, he had demonstrated that he did not bear any Fault or Negligence as foreseen under Article 10.4 of the EADCMRs. That furthermore, the average detection time of Acepromazine was 72 hours - as published by the EHSLC -, and that the peak effects of the substance took place around six hours after administration. That therefore the assumed administration of Acepromazine 35 hours prior to the dressage test would have made no sense, as the Acepromazine would have had no therapeutic effect during the dressage test, and that - as confirmed by Dr. Iullis - any effect of the Acepromazine had ended at least on the day before the Competition. Further, that - in light of the supposed time of administration (i.e. before the cross country and show jumping tests) it would not have been in his interest to administer Acepromazine to the Horse, as such administration could have had dangerous or even fatal consequences for the Horse. That this would also speak against voluntary administration of the substance by him.

- d) Referencing previous FEI Tribunal decisions the PR argued that there was no room for any sanctions if the PR established - as he had done - contamination as source of the Prohibited Substance detected.
- e) the administration of a tranquilizer, such as Acepromazine, was totally meaningless as the Horse had never presented any behavioural problems during the dressage test, and that he and the Horse had never been eliminated for indocility. Moreover that it was important to note that the Horse had been very consistent in the dressage test over the twelve (12) months prior to the Event, including at the Event. That the Horse had been tested repeatedly in other international competitions prior to the Event, and that all testing results had been negative. That in addition, two weeks prior to the Event, all products administered to the Horse had been checked by the French National Team, in order to ensure that they did not contain any Prohibited Substances. That special foods, guaranteed to not contain any traces of Prohibited Substances, had also been purchased specifically for that purpose. That he had taken any measures necessary to prevent any risk of contamination, and that he could not have watched the Horse during closing hours of the stables.
- f) insofar as the administration had most likely taken place at a time during which the stables were closed (i.e. between 11 pm and 6 am), he could not be held liable for the rule violation. That the liability of the rider would result from his "legal guardianship" over a horse, and that according to French jurisprudence, three cumulative criteria were necessary to establish legal guardianship required, i.e. the use, management and control of the object in question. That at the most likely time of the administration he had had no legal guardianship

over the Horse since he had not had any access to the stable at that time.

5. Further proceedings

- 5.1 On 18 November 2014, the FRA-NF stated that it supported the PR's argument that the PR could not be held responsible for the Horse during the time the stables had been closed.

6. Written submission by the FEI

- 6.1 On 19 December 2014, the FEI provided its Response to the written submissions by the PR. Together with its Response the FEI provided an expert statement by Dr. Stuart Paine, BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS. In his statement Dr. Paine explained that he had been informed by the FEI that according to LCH, the estimated concentration of Hydroxyethylpromazine sulfoxide detected in the Horse's B-Sample was around 20 ng/ml. That he further understood that the Horse had been sampled on 29 August 2014, at 11.20 am. That he agreed that – if indeed a dose of 0.15 mg/kg Acepromazine had been administered to the Horse as suggested by the PR – it was likely that Acepromazine administration within a timeframe greater than 26 and less than 45 hours prior to sampling would lead to a positive Acepromazine (as detected via the Hydroxyethylpromazine sulfoxide metabolite) finding at about the concentration detected in the sample in question. That however if a different dose had been given, then the time of administration could be considerably longer or shorter, depending on whether a super or sub therapeutic dose had been administered. Dr. Paine, referring to the Toutain methodology, further explained that insofar as the detection time of Acepromazine had been calculated as being 72 hours, it was possible that in a population of horses, there was a residual, but significant pharmacological effect of Acepromazine up to 72 hours post administration. That therefore – contrary to Dr. De Iullis's opinion – not the entire effect of Acepromazine might have ended the day prior to the Competition.
- 6.2 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 the status of Person Responsible simply resulted from the fact that the person was riding the Horse at the Event. That it was therefore not necessary that any further prerequisites, as referred to by the PR, and in particular legal guardianship over the Horse, were fulfilled. That the FEI Rules and Regulations, and not national regulations, were applicable to the case at hand. With regards to the PR's allegations regarding lack of stable security at the Event, the FEI highlighted that the FEI Rules and Regulations clearly stipulated that inadequate stable security should not be a defence to any violation

brought under the EADCMRs, unless the alleged inadequacy in stable security had directly caused the violation, e.g. Article 1023.18 of the VRs. That however no such causality between the alleged lack of stable security and the positive finding had been established by the PR. That additionally, Article 118.7 of the GRs made it very clear that the PR was responsible for any act performed in the stables to any horse under his jurisdiction, by himself or any other person with access to the horse. That therefore the PR was not relieved from such responsibility as a result of the alleged lack or insufficiency of stable security. That in light of the unambiguous wording of Article 2.1 of the ECM Rules, it was the rider of the Horse who -- was liable for the presence of a Prohibited Substance in the Horse's sample.

- b) as a Controlled Medication Substance, 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. The FEI further highlighted that it was irrelevant whether or not the PR had indeed administered the Prohibited Substance to the Horse, as he was charged with a violation of Article 2.1 of the ECM Rules, i.e. for the presence of a Controlled Medication Substance. Further that Hydroxyethylpromazine sulfoxide was not a threshold substance under Article 2.1.3 of the EADCMRs, and that therefore any quantity of the substance was prohibited. Moreover, that in the context of establishing a rule violation for the presence of a Prohibited Substance, it was not relevant whether the Prohibited Substance had had any effect on the Horse. That nevertheless – as explained by Dr. Paine – a residual, but significant pharmacological effect of the Acepromazine might still have been present in the case at hand at the time of the competition.
- c) where a Controlled Medication Substance has been found in a horse's sample, under the ECM Rules a clear and unequivocal presumption arose that it had been deliberately administered to the horse in an illicit attempt to enhance its performance. That as a result of this presumption of guilt on the part of the PR, and 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 period of Ineligibility foreseen under 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 increase 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 to the satisfaction of the Tribunal - on a balance of probabilities - (i) how the Controlled Medication Substance had entered the Horse's system, and (ii) that he bore No Fault or Negligence for that occurrence, i.e. that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or

the Horse's system otherwise contained) a Controlled Medication Substance.

- d) the PR's explanation regarding the source of the positive finding - namely the alleged administration of the substance by an unknown person, about 30 to 40 hours prior to the sampling - were based on a high level of speculation, in particular with regards to the dose allegedly used and presenting the basis for Dr. De Iullis' expert statement and conclusion. Furthermore that the PR had not provided any supporting factual evidence for his allegation. The FEI argued in this context that the content of the anonymous letters - presumably submitted in order to establish administration by a third party - was, in its opinion, far too vague to be sufficient to establish any facts, and could not be considered as concrete evidence of administration by a third person. Further that the PR's argument that it had been physically impossible for him to administer the Prohibited Substance to the Horse as the stable had been closed at the time of the alleged administration, was not very convincing either, as the PR did not explain as to why he as rider should have been prevented from entering the stables whereas somebody else (the identity of whom was unknown) should have been in a position to enter the stable. Finally that the entire argument of physical impossibility was founded on the pure hypothesis of administration of a usual dose. That however even the PR's expert himself had acknowledged that the standard dose of Acepromazine was highly variable, depending on the desired effect following administration. Lastly that - as explained by Dr. Paine - in case a different dose (higher or lower) had been administered, the concentration detected in the case at hand could also have resulted from administration at an entirely different time.
- e) no elimination or reduction under Article 10.4 of the ECM Rules was applicable since the PR had not fulfilled the prerequisites for the application of that rule, as he had not established how the Hydroxyethylpromazine sulfoxide had entered the Horse's system.

7. Rebuttal submission by the PR

- 7.1 On 26 January 2015, the PR provided his Rebuttal submission. In a nutshell, the PR further argued that - as previously established by the Court of Arbitration for Sport ("CAS") - a rider's presumption of guilt was only legally valid if this presumption was refutable, and that it was the PR who had to provide clues and evidence to support the allegation that he bore No Fault or Negligence for the rule violation. That in the case at hand, he had firstly demonstrated that some people had malevolent intentions towards him. That secondly, due to the insufficiency of the security in the surveillance of the boxes the realization of a malicious act had been possible, a fact that had been corroborated by scientific studies previously submitted. That it was certain that his sporting success - which was even more outstanding as he come from a family with no roots in equestrian sports - and the economic success of his father's stables - which had only been created three years ago - was likely to have arisen jealousy, which

in turn could have lead to a malevolent act. Finally, that the anonymous letters demonstrated malicious intent of some people with regards to his father.

8. Further proceedings

- 8.1 On 26 March 2015, the FEI requested the Tribunal to rule on the automatic disqualification of the PR and the French Eventing team from the Event, including the consequent forfeiture of all medals, points and prize money, in accordance with Articles 9, 10.1.1 and 11.1.1 of the ECM Rules, and in advance of a Final Tribunal Decision on the merits. In support of its request the FEI argued that in light of the fact that the PR had accepted that Hydroxyethylpromazine sulfoxide had been identified in the Sample, and that this constituted a prima facie violation of Article 2.1 of the ECM Rules, the Tribunal would have to inevitably disqualify the PR and the French Eventing team, regardless of whether or not the Tribunal accepted the PR's claim of No Fault and No Negligence for the positive finding. That furthermore, a ruling on the automatic disqualification from the Event in advance of a Final Tribunal Decision on the merits was in the interest of the sport insofar as the results of the PR had enabled the French Eventing team to qualify for the 2016 Olympic Games. That however any disqualification of the PR would also lead to the disqualification of the French Eventing team and that such disqualification would lead to a different team being qualified for the 2016 Olympic Games. That it was therefore in the interest of not only the French Evening team, but also other potentially qualified teams, to obtain clarity on the question of Olympic qualification as soon as possible.
- 8.2 On 22 April 2015, the Tribunal issued a Partial Tribunal Decision, in which it disqualified the PR's results obtained in the Event with any and all Horses with which he competed, as well as the entire French Eventing team. The Tribunal further ordered that all medals, points and prize money won had to be forfeited, in accordance with Articles 9, 10.1.1 and 11.1.1 of the ECM Rules.

9. Additional Submission by the PR

- 9.1 On 28 April 2015, the PR further explained that he had never felt that the Horse had been under any sedative influence, while training it during the days ahead of the dressage test of the event, i.e. on 27 August mid-afternoon and on 28 August at around 10.30 am, the day following the night during which the Acepromazine had been administered according to Dr. De Iullis' explanation. Further, that he had maintained the same protocols regarding food and grooming for the Event. Moreover, that he was perfectly aware of which substances were prohibited or not, and that, if he had needed to administer any Controlled Medication Substances to the Horse, he would have followed the protocols for it, as he done in a previous case, when one of his horses had had high fever. That as soon as he had been informed of the positive finding, he and his father had received phone calls, as well as anonymous letters mentioning spite

towards the two of them. Finally, that following the FEI Tribunal's decision in the case at hand, he was planning on lodging a criminal complaint with the ordinary tribunal in order that the responsible of this felony could be searched and punished.

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 he had competed with the Horse at the Event. It follows from Article 118.3 of the GRs that the status of the Person Responsible is acquired by the actions as described in Article 118.3 of the GRs, specifically by riding the Horse at an event, as the PR had done in the case at hand. The Tribunal further finds that therefore, in order to qualify as Person Responsible, it is not necessary for any person fulfilling the prerequisites of Article 118.3 of the GRs to fulfil further criteria under national law, such as e.g. maintaining legal guardianship over the horse – as claimed by the PR. In accordance with Article 118.7 of the GRs, the Tribunal holds that the PR is responsible for any act performed in the stables to any horse under his jurisdiction, by himself or any other person with access to the Horse. The Tribunal further holds that any lack or insufficiency of stable security would not relieve the PR from such responsibility neither, as clearly follows from Article 1023.18 of the VRs.

12. The Decision

- 12.1 As already held in the Partial Tribunal Decision, the PR has accepted the positive finding, both in the A- as well as in the B-Sample, and has furthermore accepted having committed a violation under Article 2.1 of the ECM Rules.
- 12.2 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR 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.
- 12.3 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 Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

- 12.4 To start with the Tribunal takes note of the PR's explanations on how the Acepromazine had entered the Horse's system, namely by an alleged malicious act of an unknown person administering the substance to the Horse about 30 to 40 hours prior to sampling, and during night hours when the stables had been closed. That this had been possible as access control had been very succinct, and without video surveillance. The Tribunal further takes note of the various anonymous letters submitted by the PR as evidence of the alleged malicious act. The Tribunal however finds that the anonymous letters are not sufficient in order for the PR to establish a malicious act, as the PR has not provided any information, nor evidence, as to when the letters have been received, by whom, by which means etc. Furthermore, the Tribunal finds that the PR's allegation of the administration of Acepromazine is highly speculative, since the allegedly administered dose on which Dr. De Iuliis is basing his statement is based on a pure speculation, and since any other dose would have led to a completely different time of administration of the Prohibited Substance. Moreover, the Tribunal finds that the PR's argument that he and his team had not been able to physically enter the stables during the alleged time of administration is not convincing, as if one were to follow the PR's argument, no one else could have entered either; or, to the contrary, if someone else had been able to access the stables, it is not understandable as to why access would not have been possible for the PR and/or his team.
- 12.5 As a result – and in the absence of any other explanation provided by the PR - the Tribunal holds that the PR has not established how the Acepromazine entered the Horse's system.
- 12.6 Accordingly, the Tribunal does not have any basis on which the level of Fault or Negligence by the PR could be assessed, and therefore does not have any basis to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the ECM Rules may be applied.

13. Disqualification

- 13.1 For the reasons set forth above, the FEI Tribunal is confirming its previous decision to disqualify the PR's results obtained in the Event with any and all Horses with which he competed, as well as the entire French Eventing team, and all medals, points and prize money won must be forfeited, in accordance with Articles 9, 10.1.1 and 11.1.1 of the ECM Rules.

14. Sanctions

14.1 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 **6 November 2015**.
- 2) The PR is fined **two thousand five hundred Swiss Francs (CHF 2,500)**.
- 3) The PR shall contribute **one thousand Swiss Francs (CHF 1,000)** towards the legal costs of the judicial procedure, as well as the costs of the B-Sample analysis.

14.2 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.

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

14.4 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



THE CHAIR, Mr. Henrik Arle