



DECISION of the FEI TRIBUNAL

dated 7 July 2016

Positive Anti-Doping Case No.: 2015/BS01

Horse: LUNATICA **FEI Passport No:** 103JV94/QAT

Person Responsible/NF/ID: Abdulla Mahmood Abdulla Darban/QAT/10044343

Event/ID: CEI1* 100 – Doha, Mesaieed (QAT) - 2015_CI_1592_E_S_01_01

Date: 2 May 2015

Prohibited Substances: Propranolol, Dexamethasone

I. COMPOSITION OF PANEL

Dr. Armand Leone, chair
Mr. Erik Elstad, member
Mr. Ludovic de Villèle, 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 presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** none

III. 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 1

January 2015, 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**"), 2nd edition, effective 1 January 2015.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2015.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2015, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Abdulla Mahmood Abdulla Darban

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."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments 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 fully 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 LUNATICA (the "**Horse**") participated at the CEI1* 100 in Doha, Mesaieed, Qatar, on 2 May 2015 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Abdulla Mahmood Abdulla Darban who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event.
- 1.3 Analysis of blood sample no. 5541641 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**") in France. The analysis of the sample revealed the presence of Propranolol and Dexamethasone in the plasma.
- 1.4 The Prohibited Substances detected are Propranolol and Dexamethasone. Propranolol is a Beta-Blocker used in the treatment of hypertension, cardiac arrhythmias, tremor and anxiety. Propranolol is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Dexamethasone is a corticosteroid with anti-inflammatory effect. Dexamethasone is classified as Controlled Medication Substance. Therefore, the positive finding for Propranolol and Dexamethasone in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 23 June 2015, the FEI Legal Department officially notified the PR and the owner of the Horse, through the Qatar National Federation ("**QAT-NF**") (Administering NF), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences. Since the PR competed for the Iran National Federation ("**IRI-NF**"), the FEI Legal Department also notified the IRI-NF of the positive finding. 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 Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 23 June 2015, until 22 August 2015. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 23 June 2015, the PR and the owner 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 Neither the PR nor the owner of the Horse did ask for the B-Sample to be analysed, and accepted the results of the A-Sample analysis.

4. Written submissions by the PR

- 4.1 On 14 July 2015, the PR explained that Ms. Sarah Al Jaber was the owner of the Horse (the "**Owner**"); the Owner has bought and received the Horse on 7 April 2015. The Horse had been kept in a private stable. That no veterinarian had seen the Horse, and the Horse had received no treatment prior to the Event. Further, that the trainer of the Horse, Mr. Beshar Anas Al Morabet (the "**Trainer**"), had called him eight (8) days prior to the Event, and had asked him to ride the Horse at the Event. The PR stated that he had seen the Horse for the first time just before the pre-ride at the Event, and that the Trainer had trained the Horse for the Event. He was expecting that the Trainer ensured compliance with the FEI Rules, especially with regards to the VRs. Finally, that he did not know how the Prohibited Substances entered the Horse's system. The trainer had been in charge of the training and for getting the Horse ready for the Event. He was a rider and not a trainer, and he only rode horses in competitions when a trainer or an owner requested him to do so. Until now he had followed FEI Rules and has never had any problems with any FEI Officials.
- 4.2 Together with his explanation the PR also provided a statement by the Trainer. The Trainer explained that he did not know how the Prohibited Substances Propranolol and Dexamethasone were administered to the Horse. That he had injected the Horse 50 ml of "Calciject 40 CM" at the end of the ride, just prior to taking the Horse to the final vet inspection. The reason for injecting the Horse was to keep the heart rate down. He did not inform the PR of the injection. The Qatar Endurance Committee informed him that the Horse had been taken to MCP at the end of the ride since a veterinarian had noticed a big and fresh injection jugular mark. They also showed him a photo of it.

5. Written submission by the FEI

- 5.1 On 13 April 2016, the FEI provided its Answer to the explanations of the PR.
- 5.2 In essence the FEI submitted that:
- a) According to Article 10.8.6 EAD Rules, violations involving both a Banned Substance and a Controlled Medication Substance shall be considered as one violation and counting as a Banned Substance

violation. This meant that the administration of a Banned Substance at any time to horses competing in events to which the EAD Rules apply constituted a violation of Article 2.2 of the EAD Rules, and its presence in a horse's sample at any time constituted a violation of Article 2.1 of the EAD Rules.

- b) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"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"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Propranolol and Dexamethasone, and together constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of those Prohibited Substances in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or (iii) that he bears No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.
- d) The EAD Rules stipulated, and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance(s) entered into the Horse's system. In the opinion of the FEI, the PR has not provided any plausible explanation of how the Propranolol and Dexamethasone could have entered into the Horse's system. The PR had to provide clear and convincing evidence that proves how the Propranolol and Dexamethasone have entered the Horse's sample.
- e) The FEI submitted that the level of the PR's fault was high and he has been negligent with regards to his responsibilities under the EADCMRs, which has resulted in the rule violation. That he has clearly failed in his duty of utmost caution to ensure that the Horse has not

ingested any Prohibited Substance. The FEI argued that the PR has not undertaken any specific action in order to comply with his duty; he has not even asked whether the Horse had been given any medication. The FEI argued that for example, he should have asked about the veterinary record of the Horse, and to review the FEI Medication Logbook, or at least talked to the Trainer, veterinarian and owner about the Horse's medical history.

- f) By reference to a CAS decision (CAS 2013/A/3318 Stroman v. FEI), the FEI argued that the PR could not rely on any person to perform this duty. The CAS jurisprudence was clear in that "*the duty of caution or due-diligence is non-delegable.*"
- g) The FEI was further of the opinion that the PR cannot say he had no responsibility for the Horse and therefore avoid strict liability solely on the basis that he only saw the Horse at the pre-ride. To the contrary, according to CAS jurisprudence (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI), the rider was, no matter what, the Person Responsible for the horse he was competing with, and cannot delegate that duty to another person. That the PR therefore had an obligation to ensure that no Prohibited Substance enters into the horse's system, and had to act with utmost caution in order to fulfil this duty.
- h) Further, that what the PR did not do was as fatal to this duty as what he did do, and that a lack of awareness on his part of the relevant rules was no defence to the EAD rule violation in question. That the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. In this respect the FEI provided a copy of the Athlete's Guide.
- i) Finally, that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for the horse's "doped condition" (which the FEI submitted has not been established in the case at hand), was a reasonable and justifiable stance. In this respect, CAS had endorsed – in its decision previously mentioned, *i.e.*, CAS 2015/A/4190 – the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, namely to "*... protect the welfare of the horse, and to ensure fair play...*".
- j) Pursuant to Article 9 of the EAD Rules, the result of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes.
- k) As fairness did not dictate that no fine be levied in the case at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter.

6. Rebuttal submission by the PR

- 6.1 On 2 May 2016, the PR stated that he was aware that he is considered as the Person Responsible in the case at hand, and as such the person to be sanctioned. The Trainer however – as he has stated himself – has injected the Horse with a product at the end of the ride without informing him. That the same person had also been trainer of other horses that have previously tested positive for Prohibited Substances, namely the horse CATAGUASES CSM (Case 2015/FT08 – tested positive for Dexamethasone), and the horse HABOOB ALREEH (Case 2014/CM02), and that the Trainer had never admitted administering those substances to the horse(s). The PR further stated that he wished to cooperate in the proceedings, but he could not, as he had no idea of how the Prohibited Substances entered the Horse's system; the Trainer did not help him in the case at hand. Finally, the PR referred to Article 169.6.5 of the GRs, which stipulated that someone could be suspended if he did not cooperate.
- 6.2 On 26 May 2016, the Trainer further explained that, whereas he has injected the product Calciject to the Horse, he was sure and confident that this product does not contain any Prohibited Substances. Further, that the PR was aware of the Calciject injection, as he had been standing beside him when he injected the Horse. With regard to how the Propranolol and Dexamethasone entered the Horse's system he had no idea, and that he was not responsible for those substances, as suggested by the PR.

7. Jurisdiction

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

8. The Person Responsible

The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

9. The Decision

- 9.1 As stated 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 where the PR waives analysis of the B-Sample and the B-Sample is not analysed. 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 LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Propranolol and Dexamethasone in the sample

taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.

- 9.2 The FEI has therefore established an Adverse Analytical Finding for a Banned Substance and a Controlled Medication Substance (for which no Veterinary Form exists), and has sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.
- 9.3 As set forth in Article 10.8.6 of the EAD Rules, where a PR, based on the same factual circumstances, is found to have committed a violation involving both a Controlled Medication Substance under the ECM Rules and a Banned Substance under the EAD Rules, the PR shall be considered to have committed one EAD Rule violation and the sanction shall be based on the Banned Substance that carries the most severe sanction.
- 9.4 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI, and it is not necessary that intent, fault, negligence or knowing Use on the part of the PR be demonstrated in order to establish an EAD Rule violation. Rather the PR has the burden of proving that he bears "No Fault or Negligence" for the positive finding as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Articles 10.4 or 10.5 of the EAD Rules, the person alleged to have committed the Article 2.1 EAD Rules violation, must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Articles 10.4 or 10.5 of the EAD Rules. The standard of proof is that the PR must establish "specific facts or circumstances" "by a balance of probability".
- 9.5 The Tribunal takes note that the PR has not provided any explanation on how the Propranolol and Dexamethasone entered the Horse's system. The Tribunal holds in this respect that the PR must establish specific facts or circumstances as to how the Prohibited Substances entered the Horse's system. A mere claim that the Trainer did not assist him with his burden of proof is not sufficient and does not relieve the PR of the duty to provide evidence as to how the Prohibited Substance entered the horse's system. The Tribunal therefore holds that the PR has not established how the Propranolol and Dexamethasone entered the Horse's system. Accordingly, the Tribunal does not need to address the question of whether the PR has established that he bears No (Significant) Fault or Negligence for the rule violation under EAD Rules 10.4 et seq.
- 9.6 However, even if the PR were able to establish how the Propranolol and Dexamethasone entered the Horse's system, which is not the case, the Tribunal would still find that the PR has not established that he bears "No (Significant) Fault or Negligence" for the rule violation. In this respect the Tribunal holds that – in accordance with Article 2.1 of the EAD Rules

- it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any stage. Furthermore – in accordance with Article 2.1 of the ECM Rules, it is the PR'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. The Tribunal finds that the PR has not established that he had fulfilled the duty of care expected of him as a rider: all he did was to rely on the Trainer without making any further enquiry or taking any other precautionary measures.

- 9.7 In line with its previous decisions, the Tribunal holds that the PR cannot be discharged of this duty – his personal duty as a rider – even when not having been in charge of preparing the Horse, and even when only having met the Horse at the pre-ride of the Event. It is the PR's duty as a competitor to make inquiries whether the Horse was free of Prohibited Substances, and put measures in place to assure that he is informed of all medications administered to the Horse. The PR has a duty to be aware of any actions taken with regard to the Horse during the competition, including how the Horse was to be presented for the final veterinary inspection.
- 9.8 Furthermore, the Tribunal holds that – in line with its previous decisions - Persons Responsible are responsible for their Support Personnel and the medical treatment given by them to their horses. In the case at hand the Tribunal finds under the EADCMRs, the PR has to assume responsibility for the actions taken by the Trainer or any other Support Personnel. The Tribunal understands that in the case at hand – as submitted by the Trainer, and in the absence of any evidence that would suggest otherwise - the Trainer gave an injection prior to the last veterinary inspection but allegedly did not administer any Prohibited Substances. Accordingly, the Tribunal finds that an injection was given to the Horse during the competition "at the end of the ride just before tacking [sic] the horse to the final vet inspection". The Tribunal however understands that – according to the VRs - during events, such as the Event, the administration of treatments and supportive therapies, whether they contain Prohibited Substances or not, is prohibited without previous authorisation. Regardless of whether the PR was actually standing beside the Trainer while the Horse was injected, as alleged by the Trainer, the PR knew or should have known what was done to the Horse to prepare it for the veterinary inspection. Certainly, the jugular injection mark was sufficiently evident that the Horse was selected for testing because of it.
- 9.9 The Tribunal finds that the welfare of the Horse in this case might have been endangered. The Tribunal understands in this respect that the heart rate of horses are monitored by veterinarians during Endurance competitions with veterinary inspections to ensure that horses are not overstressed and injured by overexertion. The Tribunal further understands that Propranolol artificially lowers the heart rate and therefore, might serve to mask horses' true heart rate which is relied upon by the FEI veterinarians at the final veterinary inspection to assess horses' health. Furthermore, the Tribunal understands, that the

administration of Propranolol would prevent an accurate evaluation of horses' condition and stress level.

- 9.10 Accordingly, the Tribunal finds that the PR has acted at least highly negligent in performing his duties as competitor. Therefore, the Tribunal comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

10. Disqualification

For the reasons set forth above, the Tribunal disqualifies 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 EAD Rules.

11. Sanctions

- 11.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders.
- 11.2 As set forth in Article 10.2 of the EAD Rules, and unless fairness dictates otherwise, a fine of CHF 15,000 is foreseen for an Article 2.1 EAD Rule violation. When deciding the fine the Tribunal takes into consideration the Prohibited Substances detected, the level of the Event, and the degree of Fault or Negligence by the PR.
- 11.3 The Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years** for the present rule violation. The period of Provisional Suspension, effective from 23 June 2015, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 22 June 2017**.
 - 2) The PR is fined **two thousand Swiss Francs (CHF 2'000,-)**.
 - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.
- 11.4 No Person Responsible, who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or in a Competition or activity that is authorized or organized 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 at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.11.1 of the EAD Rules). Under Article 10.11.3 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

- 11.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 11.6 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 twenty-one (21) 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, Dr. Armand Leone