



DECISION of the FEI TRIBUNAL

dated 27 July 2016

Positive Anti-Doping Case No.: 2015/BS07

Horse: LG MUNEERAH **FEI Passport No:** 104TQ89/URU

Person Responsible/NF/ID: Maria Fernanda Villar/URU/10062746

Event/ID: CEI2* 120 – Trinidad (URU) - 2015_CI_1056_E_S_02_01

Date: 07 – 09 August 2015

Prohibited Substance: Guanabenz

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair
Dr. Armand Leone, 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. Relevant Articles of the Statutes/Regulations:

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: Ms. Maria Fernanda Villar

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 LG MUNEERAH (the "**Horse**") participated at the CEI2* 120 in Trinidad, Uruguay, from 7 to 9 August 2015 (the "**Event**"), in the discipline of

Endurance. The Horse was ridden by Ms. Maria Fernanda Villar 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, on 8 August 2015.
- 1.3 Analysis of blood sample no. B04804 taken from the Horse at the Event was performed at the FEI approved laboratory, the U.S. Equestrian Federation Equine Drug Testing and Research Laboratory ("**USEF Laboratory**"), in Lexington KY, USA. The analysis of the sample revealed the presence of Guanabenz in the plasma.
- 1.4 The Prohibited Substance detected is Guanabenz. Guanabenz is an antihypertension medication with sedative and analgesic effect. Guanabenz is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Therefore, the positive finding for Guanabenz in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 29 September 2015, the FEI Legal Department officially notified the PR and the owner of the Horse, through the Uruguay National Federation ("**URU-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted her 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.*, 29 September 2015, until 28 November 2015. The Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 29 September 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. Preliminary Hearing

- 4.1 During the Preliminary Hearing of 1 October 2015 the PR explained that she accepted to be the Person Responsible for the positive finding. Further that her horses has been tested thirty-four (34) times in the last three to four years, and that results had always returned negative. That she did not know how the Prohibited Substance entered the Horse's system, but that she suspected that it might have entered via a gel called "EQUANIMITY", which she has used for the first time prior to the Event. That the product label of that gel did however not list Guanabenz as ingredient, and that the manufacturer of the product claimed that the product was "FEI approved". Furthermore, that the purpose of the gel was to calm horses down. Moreover, that she has used the product as it was a herbal product, and since it stated that it was "FEI approved". Finally, the PR explained that she would further investigate – including having samples of the product tested in a laboratory – how the Prohibited Substance had entered the Horse's system.
- 4.2 The FEI argued that based on what had been submitted so far, the PR has not met any of the prerequisites necessary under Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension. Specifically, the PR has not established – at this early stage in the proceedings - the source of the Banned Substance. That the establishment of the source of the Banned Substance was a necessary pre-requisite for the potential application of No Fault No Negligence in the context of Article 7.4.4 (ii) of the EAD Rules. Finally, the FEI clarified that the FEI did not "approve" any veterinary products or similar. That therefore there was no guarantee given by the FEI that any products were free of Prohibited Substances, and that it was the manufacturer who - unauthorized - chose to market its products as such. Lastly, the FEI requested the FEI Tribunal to maintain the Provisional Suspension of the PR, as well as of the Horse.
- 4.3 On 2 October 2015, the Preliminary Hearing Panel decided not to lift the Provisional Suspension of the PR and to maintain it. The Preliminary Hearing Panel found that at the time, there was no reason for the lifting of the Provisional Suspension, as based on the information provided the presence of the Banned Substance Guanabenz in the Horse's Sample was not disputed. Furthermore, the Preliminary Hearing Panel decided to also maintain the Provisional Suspension of the Horse, and found that the Provisional Suspension of the Horse shall - pursuant to Article 7.4.1 of the EAD Rules - expire on 28 November 2015, midnight.

5. Written submissions by the PR

- 5.1 On 10 October 2015 (statement dated 2 October 2015), the PR explained that she did not know how the Banned Substance has entered the Horse's sample and that this was the first time that she has heard of Guanabenz. That she has been administering the same "protocol of vitamins and supplements" to all her horses and has previously never been charged for any positive finding. In this respect, the PR provided sampling notifications for thirty (30) doping controls

conducted on horses, including the Horse, of her stable since 2012. The PR further stated – as also argued during the Preliminary Hearing – that the only difference with the Horse in comparison to her other horses was that she has put a gel called “EQUANIMITY” on the Horse’s nostrils; the product stated on its label that it was a FEI approved medication. Finally, the PR stated that she had no intention to violate any rules and felt ashamed of herself, her country and the sport.

- 5.2 On 5 May 2016, the PR further submitted that she has done everything to try to discover where the Banned Substance Guanabenz came from. The PR argued that the product Equanimity stated that it was “a natural herbs bending for calm down anxiety in horses. (made of herbs and doping free)”. Further that she has requested two different laboratories in Uruguay, which were specialized in doping tests, to carry out urine and blood samples and that both laboratories have informed her that they could not identify the substance, *i.e.*, Guanabenz. Furthermore, that she has written two emails to the manufacturer of the product, but did not receive any answer.
- 5.3 Moreover, that prior to the Event the Horse has been stabled at the stable box at night, and that the shavings from the box have been completely dirty with feces from other horses and hay. Further, that no security has been in place at the stables the night prior to the Event.
- 5.4 Finally, the PR stated that neither she nor her team, in which she has full trust having been the same faithful people over the past six (6) years, have administered the Banned Substance to the Horse. The Provisional Suspension was preventing her from working as a rider and trainer of endurance horses, something she has done for her entire life.

6. Written submission by the FEI

- 6.1 On 24 May 2016, the FEI provided its Response to the explanations of the PR. Together with its Response the FEI provided a document entitled “FEI Warning Regarding the Administration of Supplements to Horses” (the “**FEI Warning**”). The FEI Warning stated as follows:

“(…)

*Persons Responsible should be aware that it is **not unusual** for **supplements**, herbal remedies etc. marketed within the equine industry or over the internet to **contain Banned Substances or Controlled Medication Substances** that are **not disclosed** on the product label.*

(…)

*In the past horses, to which supplements, herbal remedies etc., have been given have produced positive tests as a result of ingesting such products. **Persons Responsible are responsible for what their horses ingest** and they are, therefore, **responsible for any substance found in a sample** provided by their horse. A*

*contaminated supplement will **not excuse** a positive doping test, and sanctions will be imposed in accordance with the rules.*

(...)

*Any Person Responsible who uses supplements, herbal remedies etc. for his/her horse does so **at his or her own risk** of committing an EADCMR violation. Persons Responsible should always ensure that they exercise **extreme caution** and judgment in the products that they use.*

(...)

The FEI's message is: **"IF IN ANY DOUBT, DO NOT GIVE IT TO YOUR HORSE".**

6.2 In essence the FEI submitted that:

- a) 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 Guanabenz, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of this Prohibited Substance 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.
- b) 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 offence who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless she was able to rebut the presumption of fault. And that to do this the rules specified that she must establish to the satisfaction of the Tribunal (it being hers burden of proof, on a balance of probability) (i) How the Prohibited Substance (here, Guanabenz) entered the Horse's system; and (ii) that she bore No Fault or Negligence for that occurrence; or (iii) that she bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.
- c) 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, or indeed any explanation at all, of how the Guanabenz could have entered into the Horse's system. The PR had to provide clear and convincing evidence that proves how the

Guanabenz entered the Horse's sample. The PR's explanation however indicated that she had two possible suggestions as to how the Guanabenz entered the Horse's system: (i) as a result of her use of the product Equanimity; or (ii) an indirect suggestion of contamination arising from the conditions of the Horse's stable at the Event the night before the Event. That in the FEI's opinion, neither of these scenarios had been backed up with any evidence that established how Guanabenz entered the Horse's system. That in order for the FEI to accept that the product Equanimity was the source of the Guanabenz, some scientific proof linking such product to the presence of Guanabenz, for example, official results of a controlled laboratory test on the product which showed the presence of Guanabenz, had to be provided. That the PR has not provided any such proof.

- d) Given that the PR has failed to satisfy the pre-condition under Articles 10.4 and 10.5 of the EAD Rules for a finding of No (Significant) Fault or Negligence, *i.e.*, the establishment of how the Banned Substance entered the Horse's system, the PR was not entitled to any reduction of the period of Ineligibility on the basis of No (Significant) Fault or Negligence. That, even if the Tribunal were to accept that the product Equanimity was the source of the Prohibited Substance, the PR was not entitled to claim that she bore No Fault or Negligence and had not provided sufficient evidence to entitle her to claim No Significant Fault or Negligence.
- e) The possibility for a finding of No Fault or Negligence was specifically excluded under Article 10.4 of the EAD Rules when the source of the Prohibited Substance was a mislabelled or contaminated supplement.
- f) The PR had not established either that she bore No Significant Fault or Negligence. In this respect, the FEI argued that the PR has intentionally administered the product Equanimity to the Horse and has to therefore accept the risks involved with administering such product as set out in the FEI Warning on the use of supplements. The FEI explained that the FEI Warning has been published on FEI's website, and has also been circulated to all National Federations on 23 January 2015. That the PR has not submitted any evidence regarding the steps taken by her to ensure compliance with the EADCMRs. That for example, the VRs recommended that PRs "keep a logbook listing all supplements administered to FEI Horses including all details such as date of administration, dose, place of administration (location), official product name and relevant batch number". The PR has not provided the FEI with any proof that such records had been maintained.
- g) 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.
- h) 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 these proceedings.

7. Additional submission by and on behalf of the PR

- 7.1 On 9 June 2016, the URU-NF explained that Guanabenz was a substance that could not be acquired on the Uruguayan market, and that the PR has been shocked and unable to discover how this positive finding could have transpired.
- 7.2 Furthermore, that the PR was an active member of the URU-NF, taking part in the sport for over seventeen (17) years, and that she has developed a successful stable and that her team has become one of the most important in Uruguay. Moreover, that the PR has represented the country many times at international events, and that she received numerous coaching requests from many riders from different countries.
- 7.3 The URU-NF concluded by asking the FEI Tribunal to impose the minimum sanction possible under article 10 of the EADCMs in light of the athlete's history, her lack of prior EAD Rule violations, as well as her curriculum and historical record.

8. Jurisdiction

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

9. The Person Responsible

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

10. The Decision

- 10.1 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 USEF Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Guanabenz in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding.

- 10.2 The FEI has therefore established an Adverse Analytical Finding for a Banned Substance and has sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.
- 10.3 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 she 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 Rule 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".
- 10.4 The Tribunal takes note of the PR's explanations on how Guanabenz may have entered the Horse's system, namely by her using the product Equanimity on the Horse, which product may have contained Guanabenz. At a later point in time the PR also provided an alternative explanation, suggesting a potential contamination arising from the conditions of the Horse's stable at the Event the night before the Event. The Tribunal holds in this respect that the PR must establish specific facts or circumstances that show, on the balance of the probabilities, how the Prohibited Substance entered the Horse's system. A mere claim that she administered a product that may have contained (or may have been contaminated with) a Prohibited Substance is not sufficient. The PR has not provided any evidence that the product Equanimity did actually contain (or was actually contaminated with) the Prohibited Substance Guanabenz. Neither did the PR provide any evidence under her alternative explanation regarding the allegedly unclean condition of the stable. The Tribunal therefore holds that the PR has not established how Guanabenz entered the Horse's system. Accordingly, the Tribunal does not need to address the question of whether the PR has established that she bears No (Significant) Fault or Negligence for the rule violation under Articles 10.4 and 10.5 of the EAD Rules.
- 10.5 However, even if the PR had been able to establish how Guanabenz entered the Horse's system, which is not the case, the Tribunal would still find that the PR has not established that she bore "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. The Tribunal finds that the PR has not provided any information on which measures she took to ensure that no Banned Substance would enter the Horse's body.

- 10.6 The Tribunal has taken note that the PR claims that the product description stated that the product was “made of herbs and doping free”, and that the product label did not list Guanabenz as an ingredient. The PR however did not provide any product description or laboratory analysis demonstrating that the product contained the prohibited substance. The Tribunal considers that even if this had been the case, the PR still has to assume the risks of administering a product such as Equanimity; even more so when administering such product for the first time just prior to an event, as explained by the PR. The Tribunal finds that – as also outlined in the FEI Warning -, the PR knew or should have known of the risk of contamination when applying such supplements or similar products to the Horse.
- 10.7 With regard to the PR’s alternative explanation, the Tribunal finds that it was expected of the PR to clean the box prior to stabling the Horse at the Event, thus minimizing the risk of the Horse being potentially exposed to Prohibited Substances. Furthermore, the Tribunal considers that the PR should have (or at least could have) known about the potential risks of contamination of a box which has not been cleaned and which has previously been used by other horses. The Tribunal considers that such knowledge is to be expected from a rider and trainer with considerable experience such as the PR. Furthermore, the FEI Athlete’s Guide to the EADCMRs of April 2010 (the “**FEI Athlete Guide**”), which the Tribunal understands has been made available to all Athletes and is available on the FEI website, clearly warns Athletes about this kind of potential contamination, next to feed contamination. The FEI Athlete Guide reads in this respect “...*There is evidence that some drugs excreted in a horse’s urine can be reingested if the horse eats its bedding (particularly straw). You should always ensure that your horse has clean bedding and that the bedding could not have been contaminated by another horse...*”.
- 10.8 As a result of the foregoing, the Tribunal comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

11. 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.

12. Sanctions

- 12.1 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.

- 12.2 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.
- 12.3 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 29 September 2015, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 28 September 2017**.
 - 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
 - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.
- 12.4 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.
- 12.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 12.6 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, Mr. Laurent Niddam