



**DECISION of the FEI TRIBUNAL**

**dated 14 July 2017**

**Positive Anti-Doping Case No.:** 2016/BS09

**Horse:** GRANADA                    **FEI Passport No:** 104DK01/ITA

**Person Responsible/NF/ID:** Allegra Ieraci/ITA/10097333

**Represented by:** Studio Legale Avv. Claudio Brugnatelli, Strada Nuova n. 53,  
27100 Pavia, Italy

**Event/ID:** CSI3\*-W – El Jadida (MAR) - 2016\_CI\_0722\_S\_S\_01

**Date:** 13 – 16 October 2016

**Prohibited Substances:** Oripavine, Morphine and Codeine

**I. COMPOSITION OF PANEL**

Mr. Erik Elstad, one member panel

**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 well as during the oral hearing, as also made available by and to the PR.

**3. Oral hearing:** 6 July 2017 – via telephone conference call.

Present:

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

For the PR:

Mr. Claudio Brugnatelli, Legal Counsel  
Mr. Giovanni Ieraci, PR's father

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2016, 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**"), 2<sup>nd</sup> edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition, effective 1 January 2016, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

#### **2. Person Responsible:** Ms. Allegra Ieraci

#### **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."

**EAD Rules Art. 10.5.1.1 – Specified Substances:** "Where the EAD rule violation involves a Banned Substance that is a Specified Substance, and the Person Responsible and/or member of the Support Personnel can

establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault. Where the Person Responsible and/or member of the Support Personnel intends to establish that he/she bears No Fault or Negligence, Article 10.4 shall apply."

#### **EADCMRs APPENDIX 1 – Definitions:**

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel's degree of Fault include, for example, the Person Responsible's and/or member of the Support Personnel's experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible's and/or member of the Support Personnel's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's and/or member of the Support Personnel's departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

"No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."

"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

## IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the oral 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 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 GRANADA (the "**Horse**") participated at the CSI3\*-W in El Jadida, Morocco, from 13 to 16 October 2016 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Ms. Allegra Ieraci 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 14 October 2016.
- 1.3 Analysis of urine and blood sample no. 5545007 taken from the Horse at the Event was performed at the FEI approved laboratory, the LGC Newmarket Road Laboratory (the "**Laboratory**") in Fordham, Cambridgeshire, United Kingdom. The analysis of the sample revealed the presence of Oripavine, Morphine and Codeine in the urine.
- 1.4 The Prohibited Substances detected are Oripavine, Morphine and Codeine. Oripavine is an opiate analgesic and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Equally, Morphine and Codeine are opiate analgesic and are classified as Controlled Medication Substances. Therefore, the positive finding for Oripavine, Morphine and Codeine in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules. Oripavine, Morphine and Codeine are Specified Substances, Prohibited Substances identified as Specified Substances on the Prohibited List.

### 2. The Further Proceedings

- 2.1 On 13 December 2016, the FEI Legal Department officially notified the PR through the Italian National Federation ("**ITA-NF**") and the Owner of the Horse, of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences.
- 2.2 The Notification Letter included that – in accordance with Articles 7.4.1 and 7.4.2 - the FEI may, but does not provisionally suspend the PR since the presence of Oripavine in combination with Morphine may indicate that the source of the positive finding might be due to contamination.

- 2.3 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.*, 13 December 2016, until 12 February 2017. The above Provisional Suspension of the Horse has been challenged, but was maintained, and the Horse has served the entire period of Provisional Suspension.

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

- 3.1 Together with the Notification Letter of 13 December 2016, 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 thus accepted the results of the A-Sample analysis.

### **4. Preliminary Decision**

- 4.1 On 12 January 2017, and prior to the Preliminary Hearing, the PR and the Owner of the Horse – at the time represented by a different legal counsel - requested the lifting of the two (2) months Provisional Suspension of the Horse for the reasons as follows. The PR and the Owner of the Horse argued that the source of the positive finding was clearly due to food contamination, and totally unintentional and accidental (most probably caused by the ingestion of poppy seed). That therefore any deliberate violation of the FEI Rules by any person concerned and any liability had to be excluded.
- 4.2 More specifically, the PR and the Owner of the Horse submitted that:
- a) The Horse was usually stabled at the stables ONTARIO ASD, in Basiano (MI), Italy.
  - b) From 21 September 2016 to 19 October 2016, the Horse and the PR competed in several competitions in Morocco, including in the Event. The PR and the Owner of the Horse submitted in this respect a document by the Italian National Federation called "Curriculum Cavaliere" showing that the PR took part in competitions in Morocco during the previously mentioned period of time.
  - c) Since the scheduled travel period was very long, it was not possible to stock and transport Italian horse feed for the entire trip, and therefore the Horse was fed – for almost one month – with domestic Moroccan hay, which was provided by the organizers of the various competitions.

- d) Dr. Marco Rossi, the Horse's veterinarian, declared that he did not administer - and/or make the PR administer -, neither prior or after the Event, any medication/substances to the Horse which are in violation of FEI Rules.
  - e) Due to the low clinical effectiveness and the high toxicity Oripavine was never used in veterinary medicine. Moreover, no medication containing Oripavine was on the Italian market.
  - f) The simultaneous presence of three substances (Oripavine, Morphine and Codeine) in an urine sample might be caused by an environmental/food contamination; most probably by the ingestion of poppy seed. That several cases where this has happened existed, for example the cases of Mr. Guerdat and Ms. Bichsel.
  - g) Finally, that since the hay and the feed was supplied by Moroccan organisers, for the PR and the Owner of the Horse it was impossible - at this point in time - to verify all the substances contained in such feeds and/or to provide a sample of these feeds, in order to prove that it might have contained poppy seed, or any other element that could have caused the simultaneous presence of Oripavine, Morphine and Codeine in the Horse's urine sample.
- 4.3 During the Preliminary Hearing on 13 January 2017, the PR and the Owner of the Horse further argued that in their view the "sanction", *i.e.*, the two (2) months period of Provisional Suspension of the Horse, was not deserved by the Horse, due to the simultaneous presence of the three Prohibited Substances (Oripavine, Morphine and Codeine) which spoke for itself for the highly likelihood of food contamination. Further, that in similar previous cases, *e.g.*, Guerdat and Bichsel, the consequence was that no FEI Rules had been violated.
- 4.4 During the Preliminary Hearing the FEI requested that the Provisional Suspension of the Horse - which had been imposed for the stated period of time of two (2) months - be maintained for reasons of level of playing field and welfare of the Horse.
- 4.5 In this respect the FEI further argued that the Horse had competed with a Banned Substance in its system, that there was no legitimate use for any Banned Substance, and that such substances should never be found in a competition horse.
- 4.6 Furthermore, that irrespectively of the source of the Prohibited Substances the Provisional Suspension of the Horse should be maintained for the reasons outlined above, *i.e.*, level of playing field and welfare of the Horse.
- 4.7 Moreover, the FEI clarified that Codeine was not solely a metabolite of Morphine, but could also be given to horses as a medication.
- 4.8 Finally, that - contrary to what the PR and the Owner of the Horse claimed -, and for the very same reasons, no previous case existed where the FEI requested, or the Tribunal decided to lift, the two (2) months Provisional

Suspension of a horse.

- 4.9 On 13 January 2017, the Tribunal issued a Preliminary Decision. The FEI Tribunal Chair found that – as the case stood at the time – there were no reasons for the lifting of the Provisional Suspension of the Horse. Irrespective of the source of the Prohibited Substances, the system of the Horse has contained a Banned Substance, and it is the FEI's established policy to impose a Provisional Suspension period of two (2) months in those cases.
- 4.10 In this respect, in 2016 the Tribunal has been requested to review the practice to provisionally suspend horses that had tested positive for a Banned Substance from competition for a period of two (2) months. Following review, the Tribunal has come to the conclusion that it was satisfied with the practice used for the past four (4) years, *i.e.*, since January 2012. The Tribunal further recommended to continuing to provisionally suspend horses that test positive for a Banned Substance (including Specified Substances) for a period of two (2) months for reasons of horse welfare as well as to protect the level of playing field.
- 4.11 The FEI Tribunal Chair therefore found that the Provisional Suspension of the Horse shall be maintained for reasons of level of playing field and welfare of the Horse. As a result, the Provisional Suspension of the Horse was maintained until 12 February 2017.

## **5. Written submissions by and on behalf of the PR**

- 5.1 On 24 March 2017 and on 22 June 2017, the PR provided further submissions. Together with her submissions, the PR provided several statements and reports, some of which - where relevant – are outlined below.
- 5.2 To start with, the PR provided a statement – dated 22 March 2017 - by a producer of forage for horses, EASYLAGE S.A.S, stating that EASYLAGE HORSE HAYLAGE might occasionally be contaminated with *Papaver somniferum* and relative seeds. Such contamination was proven by laboratory analysis of the product. In this respect the PR also provided a laboratory analysis report of the University of Milan, dated 27 January 2017, which confirmed that feed samples from EASYLAGE analysed tested positive for the presence of Morphine, Codeine and Thebaine. Furthermore, the PR provided a statement by Porrini Franco spa, dated 21 March 2017, confirming that his company sold hay and feed to the stables where the Horse was stabled, and that the hay sold came in most cases from EASYLAGE S.A.S.
- 5.3 Furthermore, the PR provided statements by the Horse's veterinarian Mr. Rossi, stating that he did not, and neither did he request the PR, to administer any "medication/substances" to the Horse, which violated the FEI Rules, either before or after the Event. Regarding the source of the Prohibited Substances Mr. Rossi stated as follows:

*"(...) I point out that, the simultaneous presence in the urine sample of the three substances (Oripavine, Morphine, Codeine) shall be deemed as an environmental/food contamination of the sample (poppy seed), as it has already happened before (case Guerdat and Bichsel).*

*The three active substances, belonging to the group of opiate analgesic, are substances defined, since January 2016, "Specified Substances" in the list of the Prohibited Substances of the FEI Rules. In fact, the International Federation retained necessary to consider that the anti-doping test positive to these three substances abovementioned, could be totally unintentional-accidental, excluding the voluntary violation of the FEI Rules.*

*I would like to add that Oripavine has a clinical effectiveness much lower than the its extremely high toxicity, therefore it is never used in veterinary medicine. Moreover, medication containing Oripavine marketed in Italy do not exist.*

*In conclusion, I do retain that the source of the positive finding through the anti- doping test of Granada's urine sample, shall be clearly considered the food contamination caused by the ingestion of poppy seed. (...)"*

5.4 Moreover, the PR provided reports by Dr. Marco Salvadori, veterinarian, and Dr. Marco Montana, professor at the School of Specialization "Surgery and Horse Medicine" (Faculty of Veterinary Medicine - University of Milan).

5.5 Dr. Salvadori stated as follows in his report:

*"Oripavine, codeine and morphine are opioid substances but, unlike many synthetic or semi- synthetic preparations, can be defined as opiate as they are natural alkaloids derived from the fruit of the Papaver Somniferum. That differentiates them from synthetic and semi-synthetic opioid that cannot be found in nature (methadone, etc.).*

*The World Health Organization defines as opioid all the alkaloids derived from the opium poppy (Papaver Somniferum), its synthetic derivatives and the compounds synthesized in the body that interact with those specific receptors located in the brain that have the ability to relieve pain and give a feeling of well-being. Opiate instead is the group of alkaloids derived from the opium poppy that have the ability to relieve pain, induce euphoria and, in high doses, stupor, coma and respiratory depression.*

*The fruits of poppy are like capsules, the wall of which is rich in latex; the fruits of the Papaver Somniferum are white and contain several alkaloids, from which we get opium. Unlike the fruits, the seeds do not contain alkaloids.*

*The opium alkaloids that can be found in the fruits of the Papaver Somniferum, are divided into Phenanthrenes (morphine, codeine and*

*thebaine) and Isoquinolines (papaverine, noscapine and narceine). The former have analgesic, constipating and euphoric effects, the latter have antispasmodic effects.*

*The metabolite of thebaine is oripavine of which there are no pharmaceutical preparations due to its strong toxicity. Morphine is available on the market as injectable pharmaceutical preparations for analgesic purposes while preparations containing codeine are represented mainly by cough syrups and analgesic preparations associated with fans.*

*It is believed that the Papaver Somniferum has its origins in northern Africa (Morocco, Tunisia, Libya and Northern Algeria) and Turkey, but currently you can find it in all temperate climate zones in Europe (Italy, Portugal, France and Spain).*

*In this regard in Italy, a study commission on morphine in racehorses has been established by UNIRE, the body that manages the control of prohibited substances.*

*The need for that commission arose from detecting morphine in the urine of horses resident in the Italian regions overlooking the Tyrrhenian coast. It was proved the presence of Papaver Somniferum in hays and pastures of these regions and therefore a limit was established, below which, positivity to morphine might be considered as originated from food contamination. IFHA (International Federation Horseracing Authorities) currently establishes a 30 ng / ml limit for morphine. Therefore it is in fact scientifically proven that food contamination can be a cause of positivity to opiates. In addition to food contamination, detection of opiates in the body fluids of a horse, could also be determined by the administration of drugs on the market or by the horse accidentally taking pharmaceutical preparations for human usage but containing the substances in question.*

*In the specific case under examination, the mare named Granada tested positive for three substances of the same pharmaceutical category, one of which, oripavine, is not detected in any pharmaceutical preparation for sale in the world and is not a metabolite of codeine or morphine.*

*By analyzing the possible causes for which the mare was found positive in the test for the control of prohibited substances, the intentional administration is believed to be scientifically unlikely due to both the lack of oripavine on the market and the side effects of opioids that, when added together, would likely determine limitations in performance.*

*The scientific text: " Veterinary Pharmacology and Therapeutics " (N.H Booth et al Iowa State University) points out that dosage is a problem in the administration of morphine in horses. Although some horses appear to be sedated, many of them report unwanted and dangerous central stimulation. Loss of coordination, unsteadiness and lack of recognition of the surrounding environment as well as the loss of proprioception, conditions are often detected after administration of morphine and are definitely not befitting an athlete on the verge of a*

competition.

*Codeine, the presence of which in opium is equal to 0.5%, in addition to having an analgesic effect that is 10 times lower than morphine, can also have a constipating effect on the digestive system. The accidental intake of a pharmaceutical preparation for human usage also has to be excluded as oripavine is among the substances detected in Granada mare. It is very plausible instead that the cause is to be found in a food contamination. The sequence of events that could have determined the detection of oripavine, codeine and morphine, had begun with taking the fruits of the Papaver Somniferum. As already stated, Papaver Somniferum is widespread in northern Africa, hence the administration of hay or contaminated herbs followed by metabolism of opium alkaloids, may have determined the presence of oripavine (as metabolite of the thebaine contained in opium), codeine and morphine."*

- 5.6 Dr. Montana, having reviewed literature and other documents related to the case at hand provided to him, came to the following conclusions:

*(...) From the above-mentioned literature (point a), it is possible to get certainty in these cases:*

- 1) Evidence of a quantity of morphine and other alkaloids in a food;*
- 2) Compatibility of food source by a "reasonable dose" method (ref. 5, p. 70);*
- 3) post-metabolic chemotassonomy (ref. 5, p.71).*

**Point 1:** *the EASYLAGE statement and the analyses, unequivocally demonstrate the possible presence of alkaloids in horse feeding*

**Point 2:** *the daily amount of forage, fed to the horse (10 kg), is compatible with the normal feeding of a sports horse. Considering the results of the analytical reports, the forage taken is compatible with the experimental studies mentioned in lines 22-30 which clearly and accurately, state that such alkaloid intake can cause positivity to the controls.*

**Point 3:** *It is always possible to search for what is described in the literature (Annex 5, ref. 5), as the simultaneous presence of more alkaloids confirms the claim, that morphine positivity is due to the ingestion of plants that contain them.*

*In the case under investigation, the laboratory reported the presence of three alkaloids:*

- 1. Morphine*
- 2. Codeine*
- 3. Oripavine*

*The simultaneous presence of these three active ingredients is not contemplated in any pharmaceutical specialty available in veterinary therapy as illustrated by the acts of Dr. Salvadori.*

*The presence of Morfina in the urine of the horse is compatible with the intake of "polluted" food and therefore to be included in the case of "SPECIFIED SUBSTANCE".*

*The present codeine, analyzing the analytical data present in the data pack, is about 10% of Morphine.*

*Therefore must be considered originating from Morfina's food and metabolism, also falls within the parameters as "SPECIFIED SUBSTANCE".*

*The presence of Tebaine in the ingested food explains the origin of ORIPAVINA which is, as described in the literature, the metabolite of Tebaine (annex 4 ref. 5) itself and therefore also attributable to "SPECIFIED SUBSTANCE"(...)"*

- 5.7 Finally, with regard to the organisation of the stable where the Horse is stabled, the PR provided a joint statement by herself, her mother and Owner of the Horse, as well as her father, stating as follows:

*"(...) the management of the stable is constantly supervised by the PR verifying the work of the workers involved.*

*All the people above indicated are professionals in their respective area of competence and have the necessary expertise to carry out in full autonomy the tasks that are entrusted to them. The following measures are adopted as a precaution:*

*-Traceability of the pharmaceutical products used by the veterinarians, according with the Italian legislation and with the Federazione Italiana Sport Equestri.*

*-Recording on an appropriate register of all the nutritional supplements and food administered with relative billing information.*

*Furthermore, as of now the precautionary measures will be increased.*

*It will be noted on the appropriate register the name of the supplier, the identifying number of the stock and the period of use of the alimentary products. (...)"*

- 5.8 The PR in essence further argued that:

- a) The Horse departed from Italy to Morocco on 21 September 2016 and arrived in Morocco two days later. The PR has competed with the Horse in three (3) horse shows in Morocco, in the last of which the Horse's sample analysed returned positive. The PR was entered to

those shows aiming to gain international experience, with no expectations of results.

- b) As previously submitted, once the hay brought from home was exhausted, the Horse had been fed with hay from the competition organisers. That the hay and last feed used in Morocco was not controlled and the origin was not certified. Furthermore, due to the long period in time between the Event and the notification of the positive results, no sample of the hay or feed consumed in September and October, *i.e.*, prior and during the Event, had been preserved.
- c) Regarding how the Prohibited Substances entered the Horse's system, the PR argued that it was a scientific reality, that the positive test results of these three substances, categorised as Specified Substances on the FEI List, could be totally unintentional and accidental, and thus, excluded any voluntary violation. In particular, Oripavine was not included in any pharmaceutical product worldwide, primarily due to its high toxicity. Furthermore, that the voluntary use of Morphine on a horse could be excluded also, due to the side effects it had, such as loss of coordination and dangerous stimulation of the central neural system. The simultaneous presence of Oripavine, Morphine and Codeine could be reasonably explained by food contamination, namely hay containing poppy seeds.
- d) In his report Mr. Salvadori clarified the scientific details and the reasons why a voluntary act of doping in the case at hand had to be excluded.
- e) Poppy seed contamination was recognised by FEI Rules, as well as cited in the Preliminary Decision in the case at hand. Many precedents existed, such as the cases of Mr. Guerdat and Ms. Bichsel of 2015.
- f) Many official and public declarations recognised the phenomenon of poppy seed contamination, such as the one from UNIRE, the Italian organisation for horse competitions in 2014 and the International Federation Antidoping limits about morphine. Furthermore, the report of Mr. Rossi confirmed these conclusions.
- g) Poppy seed contamination could easily and accidentally have occurred in the factory or farm, as confirmed by the Italian food and hay producer, who supplied the home stable of the Horse.
- h) Finally, the spread of alimentary contaminates such as poppy seeds was a public fact. The geographical location of this case, the temperate region of Morocco where *somniferum poppy* was commonly present, further substantiated her claim of an accidental violation.

## 6. Response by the FEI

- 6.1 On 1 June 2017, the FEI provided its Answer to the explanations submitted by and on behalf of the PR until 24 March 2017 (the laboratory analysis results of the University of Milan have only been provided thereafter).
- 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 Oripavine, Morphine and Codeine, 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.
  - 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 offences 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 her burden of proof, on a balance of probability) (i) How the Prohibited Substances 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) Regarding how the Prohibited Substances entered the Horse's system, the FEI submitted that the PR had to provide clear and convincing evidence that proved how the Oripavine, Morphine and Codeine has entered the Horse's sample. That at that point in time in the proceedings the PR had provided an explanation that the feed EASYLAGE HORSE HAYLAGE might occasionally be contaminated with papaver somniferum and relative seeds, and that the contamination was proved by laboratory control tests on the product. At that time no laboratory analysis results of the hay had been provided, and the FEI invited the PR to submit further evidence on this particular matter.
  - d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of

the degree of Fault and Negligence by the PR for the rule violation was the "personal duty" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, her personal duty to ensure that "no Banned Substance is present in the Horse's body".

- e) Further, that it was necessary to look at the definitions of fault, as defined in Appendix 1 of the EAD Rules, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence.
- f) In light of the CAS jurisprudence (outlined further below), the FEI respectfully submitted that making the PR *prima facie* responsible for the condition of the Horse while competing, subject to her ability to prove she bears No (Significant) Fault or Negligence for its doped condition, was a reasonable and justifiable stance.
- g) In this respect, CAS in the Royal des Fontaines case<sup>1</sup> had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- h) The FEI further argued that in the case at hand the PR was a rider who was 18 years old at the time of the violation. That despite her young age she has been competing at international level since 2012 on several horses several times a month.
- i) That in the case at hand the PR explained that the contamination could have been from the feed EASYLAGE HORSE HAYLAGE given to the Horse. A further possibility was that the hay bought from the competition organiser in Morocco could have been contaminated.
- j) The FEI was of the opinion, that in order to be able to apply the rules of Specified Substances, the PR still had to – at that time in the proceedings – establish the source of the contamination. The FEI therefore invited the PR to submit further evidence (i) in relation to the analysis performed by EASYLAGE on the feed EASYLAGE HORSE

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<sup>1</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, para 57.

HAYLAGE, and (ii) further information in relation to her daily habits, precaution and awareness as an international rider.

## **7. Final Hearing**

- 7.1 During the Final Hearing of 6 July 2017, Mr. Giovanni Ieraci, father of the PR, explained that the PR was riding since she was 11 years old. Further, that the Horse and the PR were initially not supposed to compete at the Event, but only in the two weeks prior to the Event, and that therefore they had to buy feed from the Event organiser, as they had not brought sufficient feed with them from Italy.
- 7.2 Moreover, Mr. Ieraci stated that since the feed supplier, *i.e.*, EASYLAGE, had issues, they had put pressure on them to have more hay testing in place, especially during the poppy seed season in autumn. In addition, they had put a register in place in which they kept track of everything regarding feed in the stables, *i.e.*, registering patch numbers, delivery dates etc. Finally, that the Horse's main veterinarian was an official veterinarian from the ITA-NF, and that they closely controlled the health of their horses, as a horse was also an investment, and a healthy horse therefore in his own interest; they would never take any shortcuts in this regard.
- 7.3 Through her lawyer, Mr. Brugnatelli, the PR further submitted that she had not known that the hay contained Prohibited Substances, and that the same hay was used for at least one (1) year, and fed to all horses in the stables. That the stables, and not she herself, bought the feed/hay for all horses, including the Horse – around thirty-five (35) in total -, which belonged to different owners. That, according to Italian laws, the stable registered the feed it bought. Further, that the PR supervised the management of the stables. Moreover, that the Horse had only been fed with the hay from EASYLAGE and with "Mangimi" horse feed from the company Porrini.
- 7.4 Furthermore, that she was aware of the EADCMRs, and that it was impossible to test hay all the time. That they would do so when they knew that there was a problem, such as in the case at hand with EASYLAGE. Finally, that they kept a notebook where all medications given by a veterinarian, as well as the feed was registered. That Italian laws however only required such registration when a horse left the stables, *i.e.*, when it was travelling.
- 7.5 Finally, that in the PR's view No Fault or Negligence, or at least No Significant Fault or Negligence, applied in the case at hand, and that she requested for the minimum sanction possible.
- 7.6 To start with, the FEI argued that it agreed that the PR's explanation that the EASYLAGE hay, fed to the Horse, which proved to be contaminated, was a plausible explanation on how the Prohibited Substances entered the Horse's system. Furthermore, in those cases where a positive finding also included Oripavine (next to Morphine and

Codeine), it was highly likely that it concerned contamination.

- 7.7 As the PR was aware of the rules, very precautionary, took no shortcuts, and supervised the stables, and since all medications, feed and supplements were registered according to the Italian laws, and considering that the Horse only ate hay and "Mangimi" horse feed, the FEI was of the opinion that (at least) No Significant Fault or Negligence applied in the case at hand. The FEI left it for the Tribunal to decide whether No Fault or Negligence was applicable in the case at hand. In this respect, the FEI stated that more controls were put in place since the positive finding, and that the EASYLAGE hay was no longer used.
- 7.8 At the end of the Final Hearing, both Parties confirmed that they had an ample opportunity to present their case.

## **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 Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Oripavine, Morphine and Codeine 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 two Controlled Medication Substances, 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.

- 10.4 The Tribunal takes note of the PR's explanations for the positive finding, namely that the hay of EASYLAGE fed to the Horse was contaminated with the three Prohibited Substances (Oripavine being a metabolite of Thebaine, as confirmed by both, Dr. Salvadori and Dr. Montana). In this respect the Tribunal also takes note of the positive hay analysis results provided, as well as the various documents and statements concerning poppy seed contamination. In addition, the Tribunal takes note of the FEI's position concerning the source of the Prohibited Substance, namely finding the PR's explanation plausible. The Tribunal further also takes note that the Horse was also fed with feed purchased from the competition organisers, as well as with "Mangimi" horse feed. Taking into account all explanations provided in the case at hand, and especially the fact that the EASYLAGE hay tested positive for the three Prohibited Substances - even though it is not clear when and how long the contaminated hay was fed to the Horse - the Tribunal finds that it is more likely than not that the contaminated EASYLAGE hay was the source of the Prohibited Substances. The Tribunal therefore finds that the PR has established - on a balance of probability, as required under Article 3.1 of the ECM Rules - how the Prohibited Substances have entered the Horse's system.
- 10.5 In a second step the Tribunal evaluates the degree of fault of the PR for the rule violation. To start with, in accordance with Article 2.1.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse at any time. For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence (Appendix 1 of the EADCMRs), the PR has to establish 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, Controlled Medication Substances.
- 10.6 In the case at hand, the Tribunal finds that the PR, even if she did not know that the hay was contaminated - as she is claiming -, could have reasonably suspected that this was a possibility. The Tribunal finds in this regard, that the PR was aware of the EADCMRs, and was generally also informed that poppy seed contamination of the hay can occur, especially during the poppy seed season in autumn. Therefore, in the view of the Tribunal, the PR could have suspected that hay contamination could occur. In this respect the Tribunal also takes note that the PR and her family, and the stables where the Horse is stabled have now - following the notification of the positive finding - put stricter procedures in place, as well as they have requested EASYLAGE (and potentially also other feed providers) to conduct testing on hay samples, especially during the poppy seed season on autumn, in order to avoid

contamination in the future.

- 10.7 As a result of the foregoing the Tribunal finds that No Fault or Negligence is not applicable in the case at hand.
- 10.8 No Significant Fault or Negligence applies where the PR establishes that her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EAD Rule violation.
- 10.9 While the Tribunal finds that the PR was at fault, the Tribunal also finds that the fault of the PR was minimal when considering all circumstances of this specific case in relationship to the EAD Rule violation. The Tribunal shares the FEI's view in this respect. More specifically, that the PR was generally aware of the EADCMRs, very precautious, took no shortcuts – as explained by her father -, and supervised the stables. Furthermore, also since all medications, feed and supplements were registered according to Italian laws, and the PR was therefore in a position to establish where the feed was coming from, and if necessary go back and have the feed analysed, as it was partially the case in the case at hand.
- 10.10 It follows from Article 10.5.1.1 of the EAD Rules, that where an EAD Rule violation involves a Banned Substance that is a Specified Substance, and the PR can establish No Significant Fault or Negligence – as it is the case in the case at hand -, then the period of Ineligibility shall be at a minimum a reprimand and no period of Ineligibility, and at a maximum two (2) years of Ineligibility.
- 10.11 Taking into consideration all circumstances of the case at hand and the PR's age and minimal degree of fault, the Tribunal finds a reprimand proportionate in the case at hand.

## **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. Since the Tribunal cannot exclude, and as no evidence has been submitted which would suggest otherwise, that the Prohibited Substances were still in the Horse's system for the remainder of the Event, *i.e.*, also during the competitions following the sampling of 14 October 2016, the Tribunal finds that the results in those competitions were likely to have been also affected by the PR's EAD Rule violation. Therefore, in accordance with Article 10.1.2 of the EAD Rules, the Tribunal is also disqualifying (if any) the results of these competitions.

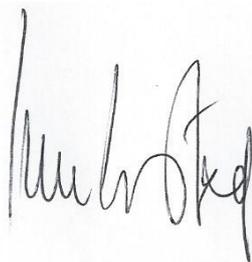
## 12. Sanctions

- 12.1 As a result of the foregoing, an EAD Rule violation (Article 2.1 of the EAD Rules) has been established. The PR shall however only be reprimanded.
- 12.2 The Tribunal 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 reprimanded, and no period of Ineligibility or fine is imposed on the PR.
  - 2) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure.
- 12.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.4 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within 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**



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**Mr. Erik Elstad, one member panel**