

**DECISION of the FEI TRIBUNAL  
dated 15 December 2020**

**in the matter of**

**Mr Ghanim Mohd Al Marri**

**(FEI Case number: FEI 2020/BS06 – VICTOTOP OCCITAN)**

**FEI Tribunal Hearing Panel:**

**Ms Valérie Horyna, one-member panel**

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**FEI Tribunal reference:** C20-0053

**Horse/Passport:** VICTOTOP OCCITAN / 105EV49 / UAE

**Additional Person Responsible/Trainer/ID/NF:** Ghanim Mohd Al Marri/10048641/UAE

**Event/ID:** CEI2\* - Bou Thib (UAE), 2019\_CI\_1884\_E\_S\_02

**Date of Event:** 12-13.12.2019

**Prohibited Substance(s):** Testosterone

**Bar Code No.:** 5587852

## I. Factual background

- 1.1 Mr Ghanim Mohd Al Marri (FEI ID 10048641), the Additional Person Responsible (hereinafter: "**the APR**") is a trainer from the United Arab Emirates (UAE).
- 1.2 The Fédération Equestre Internationale (hereinafter "**the FEI**" and, together with the APR, "**the Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
- 1.3 [REDACTED] (FEI ID: [REDACTED]), the Person Responsible (hereinafter: "**the PR**") is a rider from the [REDACTED].
- 1.4 The PR participated, with the horse VICTOTOP OCCITAN (hereinafter: "**the Horse**") at the CEI2\* 120 in Bou Thib (UAE), on 12-13.12.2019 (the "**Event**").
- 1.5 The APR was the registered trainer of the Horse.
- 1.6 Blood and urine samples were taken from the Horse on 13 December 2019. The results from the laboratory reported an adverse analytical finding for Testosterone in the urine.
- 1.7 Testosterone is an anabolic steroid with anabolic effects. This substance is listed as a Prohibited Substance (Banned Substance) under the FEI's Equine Anti-Doping and Controlled Medication Regulations (hereinafter: "**the EADCM Rules**").
- 1.8 Following the abovementioned rule violation(s), the APR was provisionally suspended by the FEI, as of 20 February 2020, and was further informed that he had the opportunity to request for a Preliminary Hearing, and that he had the right to request, within 14 days, for the Horse's B Sample to be analysed.
- 1.9 The APR submitted his request for the B-Sample analysis on 19 March 2020. Consequently, the FEI rejected this request, since it was not made within the stipulated time limit, in accordance with art. 7.1.5 of the EAD Rules.
- 1.10 The APR submitted his position to the FEI on various occasions, on 26 May 2020, on 12 June 2020, on 19 July 2020, on 9 August 2020 and on

16 September 2020. Those various submissions will be summarised below under par. II, together with the submission made by the APR in front of the FEI Tribunal.

## **II. Procedural background in front of the FEI Tribunal**

2.1 Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

### **1. Written submissions by and on behalf of the APR**

2.2 The APR submitted overall six statements of defence, five to the FEI (cf. above) and one to the Tribunal (on 24 November 2020).

2.3 The APR's various positions can be summarized as follows:

- a) The APR contests having given any banned substance directly to the Horse at the occasion of the Event, considering having not done anything unethical.
- b) The APR conducted an internal investigation, which led to the conclusion, in his opinion, that the presence of Testosterone in the sample could be either from the horse feed (both hay and supplement feeds), or from a plasma therapy that the Horse had done previously before the Horse was brought for the Event.
- c) The APR further assured that proper measures would be adopted in the future, so that similar incidents would not happen again.
- d) Upon request for clarifications from the FEI, the APR was not able to provide a specific date when the plasma therapy was performed but explained that it could have been one month before the Event (statement dated 12 June 2020) or two months before the Event (statement dated 9 August 2020).

- e) The APR thought that the Horse, which came from a private stable, was brought clean from its previous owner. The APR further alleged that he lacked any facilities to check the Horse's blood. According to the APR, the previous owner indicated that he used to give fresh frozen plasma to his horses, and that the plasma taken from one horse could have had Testosterone on it, which could "maybe" be the cause of the incident.
- f) The APR further indicated that his stable is one of the well-known stables in Dubai, which always believed in the clean and fair sport, and never tried to use prohibited substances to enhance the performance of its horses.
- g) After further investigations, the APR confirmed not being able to provide more information as to when and how the prohibited substance entered into the Horse' system. Even though he admitted his fault of not having tested the Horse, the APR considered that the mistake was made by the previous owner.
- h) To the FEI Tribunal, the APR reiterated his defence statements and indicated that he was admitting his fault. He further noted that, even though the rules regarding the accountability of the trainers had been amended by the FEI one month prior to the Event, he fully respects those rules, which aim at protecting the trainers.

## **2. Written Response by the FEI**

2.4 On 21 October 2020, the FEI provided its Response in this case.

2.5 The FEI submitted that:

- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all the elements of the EAD Rule violation, to the comfortable satisfaction of the FEI Tribunal.
- b) The elements of an Article 2.1 violation are 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 is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The strict liability also applies to Article 2.2, which states that *"It is not necessary that intent, fault, negligence or knowing Use on the part of the Person Responsible, and/or member of his Support Personnel, be demonstrated in order to establish a Rule violation for Use of a Banned Substance"*. The results of the analysis of the A-sample taken from the Horse

at the Event confirmed the presence of Testosterone (above the internationally agreed threshold) and constituted “sufficient proof” of the violation of Article 2.1 of the EAD Rules. In any event, the APR does not dispute the presence of this Prohibited Substance in the Horse’s sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the APR has violated Article 2.1 of the EAD Rules.

- c) Where a Prohibited Substance is found in a horse’s sample, a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.
- d) In order to rebut the presumption of fault, the PR must prove, on the balance of probability:
  - a. How the prohibited substances entered the horse’s system; and
  - b. That he bears no fault or negligence for that occurrence, i.e. that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the horse (or the horse’s system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or
  - c. That he bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules).
- e) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse’s system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR’s degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substances in the Horse. The FEI submitted in this context that the APR must provide clear and convincing evidence that proves how the

prohibited substances have entered the Horse's system.

- f) In this case, the FEI considers that the APR's explanations raised several questions, in particular as to the purpose and the alleged efficiency of the treatment mentioned, and even with respect to its scientific veracity in connection to the adverse analytical finding of Testosterone in the Horse.
- g) Therefore, the initial explanations failed to convince the FEI, which considers it unlikely that such "treatment" would be used to improve the immune system of a horse. Upon specific requests to provide further explanations as to the date of administration, dosage administered, both of Testosterone and frozen plasma, the APR was unable to provide the requested information, which resulted in the FEI's inability to scientifically verify the provided explanation of the potential source of Testosterone.
- h) Since the PR has not established how the Prohibited Substance entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the APR.
- i) Since the APR has failed, in the present matter, to establish how the Prohibited Substance entered the body of the Horse, the FEI cannot evaluate the APR's level of Fault or Negligence for the Rule Violation, if any, according to art. 10.4 and art. 10.5 of the EAD Rules. Accordingly, no elimination or reduction of the standard period of ineligibility is possible *in casu*.
- j) In view of the above, the FEI is of the opinion that the period of ineligibility imposed on the APR should be two (2) years.
- k) With respect to the disqualification of results, the FEI does not submit any request in this regard, since this has been resolved in the distinct procedure against the PR (which had accepted the Administrative Sanctions offered to him, including the disqualification of the results from the Event and forfeiture of all prizes and prize money won at the Event).
- l) In relation to the fine to be imposed, the FEI reminds that Article 10.2. of the EAD Rules provides that, for a violation of Article 2.1 EAD Rules, a fine of up to CHF 15'000 should also be imposed, *unless fairness dictates otherwise*. In the present matter, fairness does not dictate that no fine be levied against the APR, which should also be ordered to pay legal costs to the FEI.
- m) The FEI respectfully requests that the FEI Tribunal issue a decision:
  - (i) *upholding the charge that the Trainer violated Article 2.1 of the EAD*

*Rules;*

- (ii) imposing a period of Ineligibility of two (2) years on the Trainer, commencing from the date of the final decision (the Provisional Suspension served by the Trainer shall be credited against the imposed Ineligibility Period);*
- (iii) fining the Trainer in the amount of 7 500 CHF; and*
- (iv) ordering the Trainer to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.*

### **3. Further proceedings**

- 2.6 By email dated 21 October 2020, the FEI submitted the case file to the Tribunal for adjudication of the present case. The APR, as well as his NF, were copied to the FEI's correspondence.
- 2.7 On 13 November 2020, the Parties were informed of the composition of the Hearing Panel which was appointed to address the present matter. Furthermore, the APR was granted with the opportunity to respond to the FEI's request. The APR was informed that, should he fail to comply with the deadline provided, the Tribunal would decide the case using the file in its possession. Finally, the Parties were informed that they had the right to request for oral statements to be heard.
- 2.8 On 16 November 2020, the FEI indicated having no objection as to the constitution of the Panel but requested an extension of the deadline to make a determination as to the necessity of an oral hearing.
- 2.9 The APR submitted his statement to the FEI Tribunal on 24 November 2020. In his statement, the APR did not request for an oral hearing to be held.
- 2.10 On 30 November 2020, the Parties were informed that, since the APR did not request for an oral hearing to be held, the decision from the Panel would be based on the file and notified to the Parties in due course.
- 2.11 No further submissions were provided.

### III. Considering

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

Statutes 24<sup>th</sup> edition, effective 19 November 2019 ("**Statutes**"), Arts. 1.5, 38 and 39.

General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2020.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, changes effective 1 January 2020.

Endurance Rules ("**ERs**"), 9<sup>th</sup> edition, effective 1 February 2019, Art. 800 et seq.

FEI Code of Conduct for the Welfare of the Horse.

#### 2. Person Responsible: [REDACTED]

3. **Additional Person Responsible / Trainer:** Ghanim Mohd Al Marri

#### 4. 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)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."



**ERs Art. 800:** "The "Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice."

**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. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

#### **IV. The Decision**

##### **1. Jurisdiction**

4. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADRs and Article 18 of the IRs.

##### **2. The Additional Person Responsible**

5. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, in his quality as the Horse's rider at the Event. The PR has already been sanctioned by the FEI for the EAD Rule violation. The Tribunal wishes to clarify that Support Personnel, such as the Trainer in the present case, is to be regarded as Additional Person Responsible, as already indicated before. The case at hand deals only with the apparent EAD Rule violation of the APR.

### 3. Considering

6. As set forth in Article 2.1 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. 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 Testosterone in a threshold higher than the internationally recognised values, in the urine sample taken from the Horse at the Event. The APR did not challenge the accuracy of the test results and the positive finding, and his request for a B-sample analysis was not submitted within the prescribed deadline. Testosterone is a Banned Substance under the FEI List and the presence of this substance in a Horse's body is prohibited under Article 2.1 of the EAD Rules.
7. As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
8. Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
9. In cases brought under the EADRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation 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. In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the APR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Further, the APR does not claim the application of Article 10.6 of the EAD Rules in this case.
11. In accordance with Articles 2.1.1 and 2.2.1 of the EAD Rules, the Tribunal accepts that it is the APR's personal duty to ensure that no Banned Substance is present in the Horse's body at any time. Under the EAD Rules the APR is held strictly liable for the condition of the horse. The FEI Tribunal (cf. case FEI Tribunal C20-0039 Khalifa Ghanim Al Marri [Ref. FEI 2019/CM06 VAGABON DE POLSKI] has

confirmed the FEI's policy in making the Trainer the Additional Person Responsible, pursuant to the GRs and the EADCMRs. In the view of the Tribunal, art. 800.3-4 of the ERs has been put in place because the FEI expects trainers to take responsibility for all horses they train, regardless of the number of horses, as well as the decisions which might be made by others, such as veterinarians and grooms. The reason for that, is to safeguard the welfare of the horses, which is one of the statutory aims of the FEI.

12. Therefore, the APR – in order to potentially claim any reduction of the two (2) years period of Ineligibility – has to establish the source of the Banned Substance.
13. In this respect, the Tribunal is not convinced, that the APR was able to establish the source of the Banned Substance, on the balance of probabilities. Despite being requested several times by the FEI – which were rather lenient in this regard – the APR failed to submit conclusive (and even any) information and evidence, to prove that it was indeed the plasma therapy (or the horse feed, as initially alleged) which was the origin of the Banned Substance Testosterone in the Horse's system.
14. Furthermore, the FEI Tribunal considers that the APR was, to some extent, contradictory in two instances, which gives even less credibility to the explanations provided. First, the APR indicated, as stated above, that the presence of the Banned Substance could be explained from the horse's feed (both hay and supplement feeds) or from a plasma therapy. Later, the APR did not confirm the explanation in relation to the horse's feed but insisted that the previous horse owner was performing various plasma therapies on his horses. This, alone, makes it already rather unlikely to believe that the APR met his burden of proving how the Prohibited Substance entered the Horse's system.
15. Moreover, the APR indicated, with respect to the plasma therapy, that such therapy could have been performed on the horse one month prior to the Event, which he later argued could have been two months prior to the Event. These contradictory arguments, again, make it unlikely to believe that the APR met his burden of proving how the Prohibited Substance entered the Horse's system.
16. Hence, the APR has not established - on a balance of probability, as required under Article 3.1 of the EAD Rules – how the Prohibited Substance entered the Horse's system.

17. In the absence of establishing on the balance of probability how the Prohibited Substance entered the Horse's system, the Tribunal is not able to evaluate the degree of fault of the APR for the rule violation.
18. The Tribunal holds that No (Significant) Fault or Negligence does not apply in this case because the presence of the Testosterone on the Horse was a serious mistake by the APR, who did not take the precautions required in such a procedure.
19. Therefore, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, i.e., two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
20. The Tribunal takes note that the APR has been provisionally suspended since 20 February 2020, and the Tribunal understands that the APR has, to date, respected this Provisional Suspension; at least the Tribunal has not been provided with information otherwise. Accordingly, the period already served shall be credited against the imposed ineligibility period, pursuant to art. 10.10.4 of the EADCMRs.
21. All the evidence submitted by the parties has been taken into account, but the above sets out that which is essential to the Tribunal's decision.

#### **4. Disqualification**

22. Disqualification of the results does not apply in this case, since this has been resolved in the procedure against the PR. In said procedure, the PR had accepted, among others, the disqualification of the results from the Event, including forfeiture of all prizes and prize money won at the Event.

#### **5. Fine & legal costs**

23. According to art. 10.2 of the EAD Rules, whenever a Person Responsible is found in breach of Articles 2.1 or 2.2 of the EAD Rules, a fine should also be imposed on that person, unless fairness dictates otherwise, and the PR should also be ordered to pay the appropriate legal costs.
24. The FEI is of the opinion that, *in casu*, fairness does not dictate that no fine be levied in this case.
25. The FEI Tribunal notes that, in accordance with the FEI Guidelines for Fines and

Contributions towards Legal Costs, the standard fine for this case would be between CHF 7'500.- and CHF 15'000.-.

26. The APR did not provide any statement with respect to the requested fine to be imposed on him. In the present matter, the FEI Tribunal is of the opinion that the fault committed by the APR is serious and agrees with the FEI that there is no reason to reduce the amount of the fine to be imposed, which shall therefore amount to CHF 7'500.-.
27. The same reasoning applies to the legal costs, which amount, as per the FEI's submission, to CHF 2'000.- in this case, which is the amount that the FEI Tribunal will grant to the FEI.

## V. Operative part of the Decision

28. As a result of the foregoing, the period of Ineligibility imposed on the APR for the present rule violation shall be two (2) years.
29. The Tribunal imposes the following sanctions on the APR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
  - 1) The APR shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 20 February 2020, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the APR will be ineligible **until 19 February 2022**.
  - 2) The APR is fined **seven thousand five hundred Swiss francs (CHF 7 500)**.
  - 3) The APR shall pay **two thousand Swiss francs (CHF 2 000)** to the FEI as part of the legal costs incurred in these proceedings.
30. No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

31. Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
32. According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
33. 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.
34. This Decision shall be notified to the APR, to the FEI, and, for their information, to the NF of the APR.

**FOR THE FEI TRIBUNAL**



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**Ms Valérie Horyna, one-member panel**