

DECISION of the FEI TRIBUNAL

dated 24 June 2021

in the matter of

**the following Cases for Persons Responsible and Additional Persons
Responsible**

(FEI Case number: FEI 2019/BS28/29/30/31/36/43)

FEI Tribunal Hearing Panel:

Mr Mohammed ALSaberi one-member panel

FEI Tribunal Reference: C21-0028

Case 1

Case 2019/BS28:

Horse/Passport: **GAISFORD REEVE/ 106JL75/RSA**

Person Responsible/ID/NF: Courtney Storm GALLOCHER /10189976/RSA

Additional Person Responsible/ID/NF: Barbara GERTENBACH /10063118/RSA

Event/ID: CVI1* - Kyalami (RSA) 2019_CI_1588_V_S_01

Date of Event: 21-24.03.2019

Prohibited Substance(s): Synephrine
Bar Code Nos.: 5578593

Case 2

Case 2019/BS29:

Horse/Passport: **RIVERDANCE** /103GT29/RSA
Person Responsible/ID/NF: [REDACTED]
Additional Person Responsible/ID/NF: Barbara GERTENBACH /10063118/RSA
Event/ID: CVI2* - Kyalami (RSA) 2019_CI_1588_V_J_02
Date of Event: 21-24.03.2019
Prohibited Substance(s): Synephrine
Bar Code Nos.: 5578592

Case 3

Case 2019/BS30:

Horse/Passport: **ONDUNO GLAIDER**/ 103YQ08 /RSA
Person Responsible/ID/NF: Brooke HOLM/ 10096754/RSA
Additional Person Responsible/ID/NF: Bongani MVUMVU / 10062265 /RSA
Event/ID: CVI2* - Kyalami (RSA) 2019_CI_1588_V_S_02
Date of Event: 21-24.03.2019
Prohibited Substance(s): Synephrine
Bar Code Nos.: 5577434

Case 4

Case 2019/BS31:

Horse/Passport: **CHUCKBERRY**/102TH88/RSA
Person Responsible/ID/NF: Nicole ALLEN/10119784/RSA
Additional Person Responsible/ID/NF: Bongani MVUMVU/10062265/RSA
Event/ID: CVI2* - Kyalami (RSA) 2019_CI_1588_V_S_02
Date of Event: 21-24.03.2019
Prohibited Substance(s): Synephrine
Bar Code Nos.: 5578590 (sample taken on 23.03.2019)
Bar Code Nos.: 5577445 (sample taken on 24.03.2019)

Case 5

Case 2019/BS36:

Horse/Passport: **YENTL SAMIIH**/104EV24/RSA
Person Responsible/ID/NF: [REDACTED]
Trainer/ID/NF: [REDACTED]
Event/ID: CEIYJ1* 80 - Sondela (RSA), 2019_CI_1207_E_YJ_01

Date of Event: 01.06.2019
Prohibited Substance(s): Synephrine
Bar Code Nos.: 5578601

Case 6

Case 2019/BS43:

Horse/Passport: **ISABELLE VAN HET NETEHOF** /104SD61/RSA
Person Responsible/ID/NF: Bronwyn MEREDITH DOS SANTOS/ 10092649/RSA
Event/ID: CSI1*-W - Polokwane (RSA) 2019_CI_1481_S_S_01
Date of Event: 28.08-01.09.2019
Prohibited Substance(s): Synephrine
Bar Code Nos.: 5578605

I. Factual background

- 1.** The Persons Responsible (**the PRs**) for these cases are Ms Courtney Storm Gallocher, [REDACTED] (a Minor), Ms Brooke Holm and Ms Nicole Allen, [REDACTED] (a Minor at time of the event) and Ms Meredith Dos Santos are vaulting riders for South Africa. The Additional Persons Responsible (**the APRs**) for these cases are Ms Barbara Gertenbach and Mr Bongani Mvumvu and are lungers.
- 2.** The Fédération Equestre Internationale (**the FEI together with the PRs and APRs, 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).
- 3.** The PRs are the Persons Responsible in accordance with Article 118.3 of the FEI General Regulations, competed with their Horses at FEI Events and are vaulting riders for South Africa. In vaulting, the lunger shall be an Additional Person Responsible. Both the PRs and APRs are members of the South African Equestrian Federation (**the SAEF**), the latter being a member of the FEI and are therefore bound by the EADCM Regulations.
- 4.** The PRs and the APRs identified above consolidated their individual cases due to the following commonalities:
 - i. they all reside and rear horses in South Africa;
 - ii. cases 1 to 4 horses were all subject to doping control at some of dates/Events;
 - iii. case 5 and 6 are also riders for South Africa but competed at separate events on different dates;

- iv. their A sample analyses all test positive for the Specified Substance Synephrine;
 - v. their horses all ingested Teff Grass (both routinely and on the day of their tests); and
 - vi. they all used Teff Grass from the same producer and same region.
5. The PRs participated with the horses GAISFORD REEVE, RIVERDANCE, ONDUNO GLAIDER, CHUCKBERRY, YENTL SAMIH, ISABELLE VAN HET NETEHOF (**the Horses**), at the CVI1*, CVIJ2* and CVI2* - Kyalami (RSA) from 21 to 24 March 2019, CEIYJ1* 80 - Sondela (RSA) on 1 June 2019, 2019, CSI1*-W - Polokwane (RSA) from 28 to August to 1 September 2019 (**the Events**).
6. The Horses were selected for testing during the respective Events. Blood and urine samples (**the Samples**) were collected from the Horses and sent to the FEI approved LGC Newmarket Road Laboratory (**the Laboratory**) in Cambridgeshire, UK for analysis. The samples were divided into an "A sample" and "B sample".
7. Analyses of the A samples revealed the presence of Synephrine, a stimulant that causes vasoconstriction, increases heart rate and is used as a weight loss aid in humans. Synephrine is a Banned Substance under the 2019 FEI Equine Prohibited Substances List and also designated as a "Specified Substance". The positive findings of Synephrine in the A samples of the Horses gave rise to violations of the FEI Equine Anti-Doping Rule (**the EADRs**).
8. By Notification Letters (**the Notification Letters**) dated 5 June 2019, 7 August 2019 and 30 September 2019 in accordance with order of cases listed at the beginning of the Decision at 1-6 above (**the Decision**), the FEI informed the PRs and the APRs, and the SAEF of violations of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the EADRs based on the Laboratory's adverse analytical findings of Synephrine in the Horses' samples collected at all the Events. On the same day as the respective Notification Letters were issued, Provisional Suspensions of two months were imposed on all the Horses listed at paragraph 5 above. The PRs and the APRs were not provisionally suspended since the Prohibited Substance in question is designated as a Specified Substance.
9. In the Notification Letters of 5 June 2019, 7 August 2019 and 30 September 2019, the PRs and the APRs were also informed of their right to request the Horses' B samples to be analysed. The PRs and APRs did not request for the B-Sample Analyses of any of the Horses' samples to take place.

10. In respect of Case 6 (2019/BS43), the PR asked for the Provisional Suspension of the Horse to be lifted, but the Tribunal maintained the Horse's suspension in a Preliminary Decision, until 29 November 2019.

II. Procedural background in front of the FEI Tribunal

11. By emails dated 6 May 2021 and 3 June 2021, the FEI submitted to the FEI Tribunal the Settlement Agreements signed by the PRs and APRs for Cases 1-6.
12. On 14 June 2021, the Parties were informed of the nominated Hearing Panel appointed to address these proceedings and they were afforded the opportunity to submit objections to the constitution of the named panel by 17 June 2021.
13. On 14 June 2021, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.
14. On 17 June 2021, the PRs and APRs through their representative at SAEF confirmed receipt of said communication and that the following PRs and APRs issued no objections to the composition of the Hearing Panel: Barbara Gertenbach, Nicole Allen, Courtney Gallalocher, Bongani Mvumvu and [REDACTED] (a minor assisted by her mother, [REDACTED]). They did not receive feedback from any of the other PRs/APRs regarding objections to the composition of the Hearing Panel, therefore, by not responding within the deadline, it was deemed they agreed to the constitution of the Hearing Panel.

III. Summary of Legal Authority

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

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

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

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, changes effective 1 January 2019.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

B. 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."

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. 7.6.1: "[...] At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for these cases and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

IV. The Parties' Submissions

The Submissions of the PRs and APRs:

- 15.** The PRs and SAEF submitted that after significant effort investigating the possible sources for the finding of Synephrine, they discovered that the Synephrine most likely entered the Horse's system through Teff Grass. They furthered that Teff Grass is known to contain Synephrine and such concerns regarding this Banned Substance were also the subject of a FEI circular issued to the Equestrian Community (FEI Warning statement regarding Synephrine) distributed via email in the FEI Veterinarian Update on 13 May 2019.
- 16.** In addition, the PRs and the SAEF provided a statement from the producer of the feed and Teff Grass- Midfeeds, who submitted an affidavit (dated 28 June 2019) in respect of the Synephrine contamination in their feed supply which provided the following:
- It was brought to their attention by certain customers that horses fed on hay from their feed supply, tested positive with a hay contamination called Synephrine. As they had not heard of this before they openly supported a full investigation and testing process which was in turn supported by their only supplier Amersfoort Farms as they were all very concerned about this;
 - The producer is a supplier of Horse Feeds and Grass, in Blue Hills Kyalami South Africa, and confirmed that samples of Eragrostis & Teff were taken from their storage facilities, from the farm, which is their sole grass supplier; and a sample was collected from the Holy Berry Hall paddocks, where the affected horses were standing eating the hay purchased from Midfeeds during the duration of the event in Kyalami;
 - These samples were tested by the FDA Laboratory in South Africa, some of the samples that were tested for the substance Synephrine, were also positive for both the Eragrostis and Teff purchased from the producer. The analysis of the hay and feed confirmed the presence of Synephrine in the majority of the samples;
 - The producer also confirmed that the plant, which contains natural Synephrine, grows wildly in South Africa, and as such, is present in the various hay during the cutting and bailing process. The presence of this would be almost impossible to identify;
 - The producer is a reputable, well-known supplier and one of the largest in South Africa, who feeds the majority of the equestrian community in Johannesburg, South Africa. As a supplier they stated that they were unaware of such contamination, nor were the sole supplier (farmer) or the customers (the affected parties). The contamination of hay (both the

Eragrostis & Teff) was unintentional on behalf of all parties and there is no way the producer, the farmer or the customers could have known that such a hay (Eragrostis and Teff) was contaminated with Synephrine.

- 17.** The APR who is the Lunger Mr Bongani Mvumvu, also provided a statement in respect of these proceedings which confirmed that he did not knowingly feed or allow his Horse to be fed with hay contaminated with Synephrine. In addition, the SAEF also submitted that the FEI informed them about other positive findings resulting from the same Teff Grass produced in South Africa¹.

The Submission of the FEI:

- 18.** The FEI submitted that taking into account the affidavit and scientific results provided therein, the PRs and the APRs had no reason to suspect that the Teff Grass could contain any Prohibited Substances especially since the risk of Synephrine contamination in the equestrian community only materialised after these cases.
- 19.** Therefore, the FEI confirmed that the PRs and APRs bore no fault or negligence for the EAD rule violations.
- 20.** The FEI furthered that they were therefore satisfied that the PRs and APRs established:
- (i) on a balance of probabilities, a plausible explanation of how the Synephrine entered the Horse's system, which was via the Teff Grass from the same producer and same region in South Africa;
 - (ii) that the PRs and APRs did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that the Teff Grass contained a Banned Substance;
 - (iii) the FEI are therefore satisfied that the PRs and APRs established that they bore no Fault or Negligence for the Rule Violation;
 - (iv) In this regard the FEI referred to Article 7.6.1 of the EAD Rules which permits an agreement between the parties, subject to FEI Tribunal approval.

V. The Decision

21. Agreement between the Parties:

Quote

¹ <https://inside.fei.org/system/files/Case%20Status%20Table%20Horses%20-%202004%2009%2019.pdf>
Cases 2019/BS28, BS29, BS30, BS31, BS33, BS36, BS43, BS44.

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PRs Horses GAISFORD REEVE, RIVERDANCE, ONDUNO GLAIDER, CHUCKBERRY, YENTL SAMIH, ISABELLE VAN HET NETEHOF (the "Horses") at the CVI1*, CVIJ2* and CVI2* - Kyalami (RSA) from 21 to 24 March 2019, CEIYJ1* 80 - Sondela (RSA) on 1 June 2019, CSI1*-W - Polokwane (RSA) from 28 to August to 1 September 2019 (the "Events"), including the APRs (lungers) for the above-mentioned Horses at the Events. The PRs, the APRs and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

- (a) The PRs and the additional PRs admit the violation of Article 2.1 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*); and
- (b) The PRs and the additional PRs established on a balance of probabilities how the Synephrine entered the Horse's system; and
- (c) The PRs and the additional PRs bear no fault or negligence for the Rule Violation and therefore they shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e., two years) shall be eliminated; and
- (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules.
- (e) In accordance with EAD Rules Articles 9.1 and 10.1.2 the results achieved by the PRs and the APR's and the Horses at the Events are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (f) The PRs and the APRs shall not incur any fines;
- (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules) will apply in these cases.

The PRs and APRs acknowledged the Provisional Suspensions imposed on the Horses and accepted these remain in place until 4 August 2019, 29 November 2019, 7 October 2019, respectively.

Each party will bear its own legal and other costs incurred in connection with these proceedings.

This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated

to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

The parties acknowledged and agreed that pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

*** End Quote***

VI. Jurisdiction

22. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs. The PRs and APRs are member of the SAEF and as such they are subject to the EAD rules. Article 7.6.1 of the EADCMRs provides for agreements to be reached between parties. As a result, the FEI Tribunal has the requisite jurisdiction to approve and issue this Decision.

VII. Approval of Agreement

23. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the Parties agree the PRs and APRs have established on a balance of probability – how Synephrine was present in the samples of all the Horses tested and listed at paragraph 5 of this Decision.

24. The Tribunal acknowledges that the PRs, APRs and the FEI have agreed on terms for the closure of proceedings in accordance with 7.6.1 EAD Rules as detailed at paragraph 21 of this Decision.

25. The Tribunal wishes to highlight that the present Agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the Decision in these proceedings depends on the particular circumstances disclosed as set out above.

26. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EAD Rules.

27. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present Cases 2019/BS28, BS29, BS30, BS31, BS33, BS36, BS43.

VIII. Decision

- 28.** The Tribunal rules that the Agreement reached between the FEI and the PRs and APRs concerning the Cases 2019/BS28, BS29, BS30, BS31, BS33, BS36, BS43 are hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article V above are incorporated into this Decision.
- 29.** This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 30.** This Decision shall be notified to the PRs, APRs, the Secretary General of the NF of the PRs, APRs, and to the FEI.
- 31.** This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IX. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
b. The Secretary General of the NF of the persons sanctioned: Yes
c. The President of the Organising Committee of the Event through his NF: No
d. Any other: No

FOR THE FEI TRIBUNAL



Mr. Mohammed ALSaberi, One-Member Panel