

DECISION of the FEI TRIBUNAL

dated 5 October 2021

(FEI Case number: FEI 2019/BS48-KASSIDY DE JANSAVIS)

FEI Tribunal Hearing Panel:

Mr Christopher Hodson QC

FEI Tribunal Reference: C21-0031

Horse/Passport: KASSIDY DE JANSAVIS/104QP93/UAE

Person Responsible/ID/NF: Omar Ibrahim AL MARZOOQI/10137894/UAE

Trainer/ID/NF: Abdul Kader ABDUL SATTAR/10032531/UAE

Event/ID: CEI2* 120 - Bou Thib (UAE), 2019_CI_1879_E_S_02

Date of Event: 01-02.11.2019

Prohibited Substances: Diisopropylamine

Bar Code Nos.: 5587723

I. Factual background

- 1.** Mr Omar Ibrahim AL MARZOOQI (FEI ID 10137894), the Person Responsible **(the PR)**, is a rider for the UAE.
- 2.** Mr Abdul Kader ABDUL SATTAR (FEI ID 10032531), was the registered Trainer of the Horse in the FEI database at the time of the Event, the Additional Person Responsible **(the APR)**.
- 3.** The Fédération Equestre Internationale **(the FEI and together with the PR and 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).
- 4.** The PR competed with the horse, KASSIDY DE JANSAVIS **(the Horse)** at CEI2* 120 - Bou Thib (UAE), 2019_CI_1879_E_S_02 **(the Event)**.
- 5.** Blood and urine samples were taken from the Horse on 2 November 2019 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory **(the Laboratory)** in Sha Tin, Hong Kong, China, for analysis. The Horse's samples were divided into an "A sample" and "B sample", with collective reference number 5587723.
- 6.** The laboratory analysis of the A sample reported an adverse analytical finding for Diisopropylamine in the blood and urine sample, which is a "Banned Substance" under the FEI's Equine Prohibited List.
- 7.** Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited List. The positive finding of Diisopropylamine in the A Sample gave rise to an Anti-Doping Rule Violation under the Equine Anti-Doping and Controlled Medications Regulations **(the EADCMRs)**.
- 8.** The EADCMRs applicable to these proceedings were adopted by the FEI General Assembly in November 2018 and came into force on 1 January 2019. They apply to *'each Person Responsible and their Support Personnel by virtue of their membership in, accreditation by, or participation in the FEI or National Federation, or in their activities, Competitions or Events'*.¹

¹ Introduction to the EADCMR at p 2.

Most relevantly for present purposes, Article 2.1 of the Equine Anti-Doping Rules (EAD Rules) prohibits *'The presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample'*.

9. In addition, the administration of a Banned Substance at any time to horses competing in events to which the EAD Rules apply constitutes a violation of Article 2.2 of the EAD Rules, and its presence in a horse's sample at any time constitutes a violation of Article 2.1 of the EAD Rules.

II. Initial Proceedings

10. On 2 December 2019, the FEI Legal Department officially notified the PR and the APR through the National Federation of the UAE (**the UAE-NF**) of the presence of the Prohibited Substances in the A sample collected at the Event, the rule violation, and the potential consequences (**the Notification Letter**). In accordance with Article 7.4.1 of the EAD Rules, the Notification Letter also included notice that the PR and the APR were provisionally suspended from all competition until further notice from 2 December 2019 and granted them the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal (**the Tribunal**) pursuant to Article 7.4.4 of the EAD Rules.
11. The Notification Letter also included notice that the Horse was also provisionally suspended for a period of two months, from the date of the Notification Letter, i.e., 2 December 2019 until 1 February 2020. The Provisional Suspension of the Horse was not challenged, and the Horse served the entire two-month period.
12. The PR and the APR were also informed in the Notification Letter of their right to request an analysis of the B sample. and in letter dated 8 December 2019², they requested for a B sample analysis to be carried out at the LGC Laboratory located at Newmarket Road, Fordham, Cambridgeshire, UK which confirmed a presence of Diisopropylamine in the Urine Sample³.
13. The PR was informed about the results of the B Sample analysis by a correspondence of 4 February 2020⁴.

III. Further Proceedings

² FEI Response dated 26 May 2021- Exhibit 11 explanation letter dated 8 December 2019 from Al Maghaweer Stables.

³ FEI Response dated 26 May 2021- Exhibit 12 and 13 (Confirmatory analysis LGC and data pack).

⁴ FEI Response dated 26 May 2021- Exhibit 14 Letter dated 4 February 2020 from FEI Legal Department.

14. By email dated 26 May 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel.
15. On 27 July 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to constitution of the hearing panel by 30 July 2021. The PR and APR were also granted the opportunity to respond to the FEI's allegations by submitting their respective positions by 16 August 2021. The PR and APR were also informed that the Tribunal will generally decide such cases based on written submissions, however the Parties were informed that they had the right to request an oral hearing by 19 August 2021, failing which the right for an oral submission would be deemed as waived.
16. On 27 July 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
17. Neither the PR nor APR communicated any objections to the composition of the hearing panel. Therefore, by not responding within the deadline, it was deemed that they agreed to the constitution of the hearing panel.
18. Neither Party requested an oral hearing.
19. On 29 August 2021, the Head of the Veterinary Department at the UAE-NF confirmed via email to the FEI Tribunal that the case documents had been forwarded and received by the Parties.

IV. Summary of Legal Authority

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

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

General Regulations, 24th edition, January 1st, 2019, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations

("EADCMRs"), 2nd edition, changes effective January 1st, 2019. The EADCM Regulations are comprised of the equine anti-doping rules (**the "EAD Rules"**) in the first half and the equine controlled medication rules (**the "ECM Rules"**) in the second half.

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

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

FEI Endurance Regulations ("**ERs**") effective February 1st 2019.

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. 3.1: "Burden and Standards of Proof. The FEI shall have the burden of establishing that an EAD Rule violation has occurred. The standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in

mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these EAD Rules place the burden of proof upon the Persons Responsible and/or member of their Support Personnel to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except where a different standard of proof is specifically identified”.

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 and appropriate legal costs shall also be imposed for any Equine Anti-Doping or Controlled Medication violation”.

Article 800 of the Endurance Rules: “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”.⁵

V. The Parties’ Submissions

The Submissions of the PR and the APR

- 20.** Following the receipt of the Notification Letter dated 2 December 2019, the PR, the APR and Al Maghaweer Stables confirmed via letter dated 8 December 2019 they had opened an investigation in order to discover the source of the banned substance in their stables.
- 21.** By letter dated 18 May 2020 (and received by the FEI on 16 August 2020), the APR of the Horse provided the following explanations⁶:
 - (i) Al Maghaweer Stables is under professional management with an in-house data management system that records the daily

⁵ Due to the above specificities of the Endurance discipline with Trainers making relevant decisions about their horses, a Trainer is always regarded as an additional Person Responsible in accordance with Art. 118.3 of the General Regulations. This was further confirmed in the recent FEI Tribunal Decision of the cases 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI.

⁶ FEI Response dated 26 May 2021- Exhibit 16 Letter dated 18 May 2020 from FEI Legal Department.

weight, feeding, veterinarian and farrier treatments, as well as training records of the horses for the past 4 years (those records were attached to the correspondence);

- (ii) The analysis of the feed and supplements given to the Horse in the months leading to the Event did not reveal any Prohibited Substances;
- (iii) Similarly, the analysis of the veterinary treatments provided to the Horse in 2019 did not reveal administration of the Prohibited Substances to the Horse;
- (iv) The APR of the Horse is well aware that Diisopropylamine is a Banned Substance;
- (v) During the investigation it was discovered that at the time leading to the Event, the Horse was prescribed a "*typical injection programme*" of 20ml IM of the Tripart supplement;
- (vi) Nevertheless, the day before the Event, the Horse was administered 20 ml IM of Tridenosen injection instead of Tripart injection;
- (vii) At the Al Maghaweer Stables the injections are prescribed by the treating veterinarian and given to the horse by a technician;
- (viii) The technician who gave injection to the Horse got confused between the names Tripart and Tridenosen, both having similar coloured stickers; and confusion arose as English is not the first language of the technician;
- (ix) The Tridenosen product is kept in a separate part of the Al Maghaweer's pharmacy as their doctors know that it contains Prohibited Substance;
- (x) Following the positive test of the Horse, the procedures were changed in the Al Maghaweer Stables: all medications given to the horses prior to competition are drawn up by a technician but must be signed off by the veterinarian in the pharmacy before the syringe is taken to the stables; what is more, all medicines are now kept inside the clinic and no bottles of medicine are allowed to be kept in the stables;

(xi) The APR of the Horse apologised for the mistake and reiterated that the PR had full trust in him and the Al Maghaweer Stables' training system.

22. Following the receipt of the APR's correspondence, the FEI requested additional explanations on the alleged incident in email dated 2 September 2020 (FEI to UAE-NF).

23. Those additional explanations were forwarded to the FEI through an email of 26 January 2021 and contained:

(1) a letter from the PR dated 24 January 2021 wherein he stated that:

- he understands and respects the laws of the FEI which put the responsibility on the rider of the horse;
- he is taking the upmost care of his horses in every race and ensures that they eat, drink and move well;
- he always checks with the Trainer and the team regarding the medicines and the food that the horses were given and whether they are drug free;
- he makes sure that the horses don't have any illnesses or injuries prior to riding them;
- he had full trust in his team and was really disappointed by the positive result;
- he apologised for the issue;

(2) a letter from the APR of the Horse dated 23 January 2021 wherein he reiterated that:

- he takes the full responsibility for the adverse analytical finding of Diisopropylamine in the Horse;
- the PR had full trust in him and the team;

(3) and also, the additional explanations to the FEI questions stating the following that:

- Tripart is a supplement that is commonly used in the Al Maghaweer Stables for an alleged benefit to the muscles of the horse after a hard training session or before

travelling (it allegedly prevents the horses' muscles becoming tight and cramping during the travel, when horses travel the evening before the race as it is a close interval and those horses do not have a lot of time to recover before the race starts);

- Tridenosen is used by the Al Maghaweer Stables for similar situations;
- All medications/products arrive to the Al Maghaweer Stables warehouse where they are dispatched to the clinic. Majority of the medications/products stay in the clinic. When needed, medications/products are dispatched to the stables (according to the injections' programme for the week);
- Tripart product was in the stable already in the days prior to the Event;
- The day before the race, the truck was waiting for the horses to be loaded; the grooms and technician were in a hurry because they are particular times when trucks are not allowed on the road; the registered Trainer of the Horse asked the technician whether the Horse had received Tripart product to which the technician replied no, that since the Tripart product that was kept in the stable was finished; the registered Trainer of the Horse asked the technician to go to the clinic and get some more Tripart product and inject the Horse; so the technician ran to the clinic and in a hurry he drew up the Tridenosen bottle (as allegedly it is used for the same purposes as the Tripart product) and injected the Horse with it;

(4) A testimony provided by the technician at Al Maghaweer Stables which confirmed that:

- the technician performs injections to the horses at the Al Maghaweer Stables for the standard injections programme whereas for any injuries or emergency situations this is carried out a doctor;
- it is the trainer who decides on the injection programme for the horses prior to races and this programme is given

to the technician in an excel spreadsheet (name of the product to be injected and the amount as well as the route of the administration);

- on the day prior to the Event, when the horses were leaving the stables, the team was in a rush because of the timings the trucks needed to be on the road;
- the technician injected one horse with the Tripart product in the morning only, after which the bottle was finished, and he forgot to advise the Trainer about it;
- when the registered Trainer of the Horse discovered that the Horse had not received the Tripart injection before the travel, he became frustrated and requested the technician to hurry up and provide the injection to the Horse;
- the technician ran to the clinic and got the red bottle, which according to him, looked like the Tripart bottle and he drew 20 ml in a syringe, he left the bottle in the clinic and ran back to give the Horse the injection.

Written Response of the FEI

A) Violation by PR and APR - Article 2.1 of the EAD Rules:

- 24.** In respect of the violation of the EADCMRs of the PR and the APR, the FEI noted Article 3.1 of the EAD Rules makes it the FEI's burden to establish all the elements of the EAD Rule violation charged, to the comfortable satisfaction of the FEI Tribunal. Furthermore, the FEI stated that the elements of an Article 2.1 violation are straightforward, that '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. As such, the results of the analysis of the A Sample taken from the Horse at the Event confirming the presence of Diisopropylamine constituted sufficient proof of the violation of Article 2.1 of the EAD Rules.
- 25.** The FEI also pointed out that neither the PR nor the APR disputed the presence of Diisopropylamine in the Horse's Sample. To the contrary, the

FEI noted that the PR and APR of the Horse as well as the Al Maghaweer Stables alleged that a presence of this Prohibited Substance in the Horse's Sample was due to a mix-up between the Tripart and Tridenosen products on the behalf of the technician when he administered the injections to the Horse⁷. Accordingly, the FEI submitted that it discharged its burden of establishing that the PR and the APR violated Article 2.1 of the EAD Rules.

B) Imposition of a period of Ineligibility:

- Previous anti-doping rule violation- APR

26. At the outset, the FEI noted that in respect of the APR this was not the first anti-doping rule violation committed by him. Moreover, that the APR was sanctioned by the FEI Tribunal with two (2) year Ineligibility period (starting on 21 February 2011 and ending on 20 February 2013) as a Person Responsible for the presence of a Banned Substance - Testosterone in a horse's sample tested at the CEI1* 80km - Dubai (UAE) event held on 20 November 2010⁸.

27. According to the Article 10.8.1 of the EAD Rules: *'For a Person Responsible and/or member of the Support Personnel's second EAD Rule violation, the period of Ineligibility shall be the greater of:*

(a) six months;

(b) one-half of the period of Ineligibility imposed for the first EAD Rule violation without taking into account any reduction under Article 10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second EAD Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.'

28. Furthermore, the FEI confirmed that Article 10.8.5 of the EAD Rules provides that: *'For purposes of Article 10.8, each EAD Rule/ECM Rule violation must take place within the same ten-year period in order to be considered multiple violations.'*

⁷ FEI Response dated 26 May 2021- Exhibit 16, 19, 20,21 Statements and Explanations from the PR and APR to the FEI Legal Department.

⁸ FEI Response dated 26 May 2021- Exhibit 25, Decision of the FEI Tribunal dated 3 October 2011 (EURAMAN KARA CO BAR, 2011).

- 29.** Accordingly, the FEI confirmed that as the previous anti-doping rule violation committed by the APR was an EAD Rule violation which occurred in the previous 10 years (exactly on 20 November 2010), the current violation (committed on 2 November 2019) shall be considered as a second anti-doping rule violation committed by the APR under the EADCMRs.
- 30.** Consequently, the FEI explained that in order to determine the appropriate sanction for the current anti-doping rule violation committed by the APR, firstly it is necessary to determine which would be the appropriate sanction for the second anti-doping rule violation if it was treated as a first violation. Once this is established, the mathematical exercise provided in Article 10.8.1 of the EAD Rules will deliver the answer as to the applicable ineligibility period in the current proceedings.

- **Presumption of Fault**

- 31.** The FEI also referred to Article 10.2 of the EAD Rules wherein it states that a Person Responsible with no previous doping offences who violates Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault. In order to do this the rules, specify that he must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability⁹):

- (1)** How the Prohibited Substances (here, Diisopropylamine) entered into the horse's system; and
- (2)** 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
- (3)** 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).

⁹ Art 3.1 EADR

- 32.** The FEI submitted that if the PR or APR fails to discharge this burden, the presumption of fault stands, and therefore the two-year ban under Article 10.2 applies.
- **The 'threshold' requirement: proving how the Diisopropylamine entered into the Horse's system**
- 33.** The FEI highlighted that the EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and the CAS are very clear that: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR and/or APR proves how the substance entered into the Horse's system.
- 34.** They furthered that this requirement must be strictly applied because without such proof it would be impossible to assess the PR's and APR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.
- 35.** The FEI submitted in this context that the PR and/or APR must provide clear and convincing evidence that proves how the Diisopropylamine entered the Horse's system. In this case, the PR and APR submitted that the Prohibited Substance Diisopropylamine was administered to the Horse by the technician who injected the Horse with the product Tridenosen as already noted at paragraph 25 of this Decision.
- 36.** The PR and APR assertions are corroborated by the statement from the technician who performed the injections and who allegedly mixed up the Tridenosen and Tripart products¹⁰, the excel files providing the details of the feed and supplements given to the Horse in the months leading to the Event and the veterinary treatments provided to the Horse in 2019¹¹, as well as a table of the injections programme which were supposed to be administered to the Horse few days before the Event (medical log book)¹².
- 37.** Furthermore, the FEI noted that when they carried out an online research of the two products, one can immediately spot that indeed Tripart¹³ should not contain any Prohibited Substances whereas Diispropylamine is clearly mentioned as an ingredient in the Tridenosen¹⁴ product.

¹⁰ FEI Response dated 26 May 2021- Exhibit 21, Q. 6 Testimony of Technician dated 23 January 2021.

¹¹ FEI Response dated 26 May 2021- Exhibit 16, Trainer's explanations Appendix 1 details.

¹² FEI Response dated 26 May 2021- Exhibit 21, Appendix 2.

¹³ See for example: <https://www.ceva.com.au/Products/Products-list/Tripart-Injection>

¹⁴ See for example: <http://manoequestrianservices.blogspot.com/2007/10/tridenosen.html>

38. Consequently, given all of the above particulars the FEI confirmed that the PR and APR (and their team) established on a balance of probabilities how the Prohibited Substance Diispropylamine entered the Horse's body, namely through an injection of the Tridenosen product.

- **Fault/Negligence for the rule violation**

39. The FEI submitted that in terms of the degree of Fault and Negligence by the PR and APR for the rule violation, the starting point of any evaluation is the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, i.e., his personal duty to ensure that "*no Banned Substance is present in the Horse's body*".

40. Furthermore, the FEI noted that it is necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCMRs.

"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible 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 degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour."
(Emphasis added)

"No fault - The Person Responsible 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."

"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... the Athlete must also establish how the Prohibited Substance entered the Horse's system."

41. First of all, the FEI highlighted that Banned Substances are never to be found in a competition horse, as these are substances with no legitimate

use and have a high potential for abuse¹⁵. It is the PR and APR personal duty to ensure that no Banned Substance is present in the Horse's body.

- 42.** The FEI noted that the PR vaguely stated in his submissions that *"he is taking the utmost care of his horses in every race and ensures that they eat and drink and move well"*. He allegedly also *"checks with the Trainer and the team regarding the medicines and the food that the horses were given and whether they are doping free"*¹⁶.
- 43.** Unfortunately, the FEI considered the latter claims as totally unsubstantiated by any means or examples apart from the words of the PR in his statement of 24 January 2021. Neither the PR nor his entourage described any procedures that were put in place with the agreement of the PR in order to ensure that he is informed of the feed, workout regime, medications or supplements being administered to the Horse and most of all to make sure that no Prohibited Substance is administered to the Horse either intentionally or inadvertently by any of the members of the Al Maghaweer Stables staff. Thus, the FEI viewed it as rather unusual that the PR who had *"full trust in his team"* was not at all involved with or informed about the daily care, treatments and workouts of the Horse. Furthermore, it is evident from the documents submitted that the PR did not inquire directly prior to the Event which products were administered to the Horse and whether they contained any Prohibited Substances.
- 44.** In respect of the claims of the APR, the FEI noted that the APR stated that the Prohibited Substance was administered to the Horse through an injection of Tridenosen product by the technician working at the Al Maghaweer Stables who mistakenly thought it with a Tripart product. The APR further apologised for *"this neglectful situation"* and admitted that *"this was a huge mistake from my side as the trainer and I take full responsibility for this"*.
- 45.** Taking into account the points raised at paragraphs 43 and 44 above, the FEI considered that the circumstances of the present case demonstrated that the procedures in place at the Al Maghaweer Stables were insufficient and erroneous.
- 46.** The FEI noted that Al Maghaweer Stables advertise themselves as *"7-star endurance stables"*¹⁷. Therefore, the FEI believed one should first and foremost ask a question why the product Tridenosen, of which the

¹⁵ Veterinary Regulations Article 1055.

¹⁶ FEI Response dated 26 May 2021- Exhibit 19, Statement of the PR, 24 January 2021.

¹⁷ See: <https://www.almaghaweer.ae/>

registered Trainer of the Horse as well as the veterinarians know contains a Prohibited Substance, is kept on the premises of such stables and apparently used routinely.

- 47.** The FEI noted that there is not much information publicly available on the Tridenosen product itself (apart from its ingredients and recommended use). It is hard to know which company produces it and how it can be obtained. Most of information on the Tridenosen product comes from different forums and discussions and not directly from the producers.
- 48.** Regarding the Tripart product, which is also used routinely by the Al Maghaweer Stables, the FEI confirmed that from the information provided it is allegedly employed as some kind of supplement administered to the horses after a hard workout and/or travel to *"prevent the horses' muscles becoming tight and cramping"*¹⁸. However, if a horse is often cramped, or even worse tied up, a question must be raised whether the horse is fit enough or suitable for a heavy workout and constant competitions and whether training methods are adequate for this horse. The FEI also considered that it was unclear whom and based on which information/conditions decides on injection programme of the Horse: the APR of the Horse claimed that those injections are prescribed by the treating veterinarian and given to the horse by a technician whereas the technician submitted that it is the trainer who decides on the injection programme for the horses prior to races and this programme is given to the technician in an excel spreadsheet.
- 49.** Furthermore, the FEI stated that horses generally travel well. When travelling by roads with lots of stops and starts, the horse needs to re-adjust its balance a lot which can be tiring and the truck should be therefore stopped regularly to allow rest time (and water, feed etc.). If the above is followed, in general there is no need for a prophylactic treatment. Nevertheless, if the horse is still stiff from travel then again a question shall be raised whether it is in good enough shape to be competing.
- 50.** The FEI also noted that a table was provided by the APR of the Horse regarding the veterinary treatments provided to the Horse in the year 2019 which showed that the Horse was often suffering from lameness, including shortly before the Event, on 28 October 2019 and shortly after the Event, on 3 November 2019¹⁹. The FEI deemed that this again puts into question

¹⁸ FEI Response dated 26 May 2021- Exhibit 21, Q2.

¹⁹ FEI Response dated 26 May 2021- Exhibit 16, Appendix 2.

whether the well-being of the Horse was truly the central focus of the PR and APR of the Horse, and the appropriateness of the injections provided to the Horse was considered and whether the Horse was fit enough to compete at the Event.

- 51.** Furthermore, the FEI noted that the APR of the Horse submitted that the Tridenosen product is apparently kept in a separate part of the Al Maghaweer's pharmacy. Unfortunately, no specific information on the storage was provided. Nevertheless, the FEI argued that even if one was to accept these statements as true, the Tridenosen product was obviously not locked and therefore was easily available to anyone since the technician could have picked it up in a rush and administer to the Horse in short time before leaving for the Event.
- 52.** The FEI noted that it was also submitted by the APR of the Horse as well as the technician that the labels of the two products, Tripart and Tridenosen, are similar in colour and therefore they were mixed-up and mistakenly used²⁰ however the FEI do not agree with such claims after comparing the pictures of the labels on the products. In particular, the FEI noted that when comparing pictures of the two products, one can immediately spot a clear difference between them. This difference shall be all the more striking to the technician who allegedly used a Tripart product in the morning on the same day when he injected the Horse with Tridenosen product. Therefore, the FEI argued that the technician should have had a fresh recollection in his head of the Tripart label product and any label different to that one ought to have raised his attention in the clinic of the Al Maghaweer Stables.
- 53.** Finally, the FEI submitted that Tripart and Tridenosen products are both familiarly called as "no-tying up" products and both are used routinely in the Al Maghaweer Stables. Therefore, the FEI regarded that it was quite surprising that no special attention was paid as to the storage and access of the Tridenosen product, and that no training was organised to the staff of the Al Maghaweer Stables.
- 54.** Having regard to all of the issues presented above, the FEI considered that the procedures put in place at the Al Maghaweer Stables were inadequate and erroneous.

- The Position of the FEI regarding the PR's sanction:

²⁰ FEI Response dated 26 May 2021- Exhibit 16, Appendix 2.

55. Therefore, the FEI concluded that the PR's behaviour was highly Negligent due to the following points:

- that the PR had "*full trust in his team*" however there was no system put in place wherein the PR would have been regularly updated on the feed, workout regime, medications or supplements being administered to the horses he was competing with;
- had the PR showed a minimum interest in which products and treatments are prescribed to the horses in the Al Maghaweer Stables, he would have immediately discovered that the Al Maghaweer Stables store and use products containing Prohibited Substances and therefore a special procedure needed to be established in order to prevent administration of those products to the competition horses;
- the PR did absolutely nothing to ensure that no Prohibited Substances were administered to the Horse and therefore he clearly did not comply with a personal duty requirement imposed upon him by the Article 2.1.1 of the EAD Rules.

56. In summary, the FEI noted that no reduction of the standard sanction as provided in Article 10.2 of the EAD Rules is possible in the present matter for the PR and consequently the FEI requested that the PR shall be sanctioned with two (2) years Ineligibility period and that the Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EAD Rules.

Disqualification of Results for the PR:

57. In respect of the disqualification of results for the PR, in accordance with Article 9 of the EAD Rules which provides that an EAD Rule violation '*in connection with a Test in a given Competition automatically leads to the Disqualification of the result of the PR and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes*'. This rule applies even if the period of Ineligibility is reduced or eliminated under Article 10, e.g., on the basis of No (or No Significant) Fault or Negligence. Further, since this is a case involving a Banned Substance, occurring during or in connection with an Event, in order to safeguard the level playing field, the FEI may disqualify all of the PR's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules.

Fine and Costs for the PR:

- 58.** The FEI submitted that in respect of the fines and costs to be imposed on the PR, Article 10.2 of the EAD Rules provides that for a violation of an article 2.1, a Person Responsible shall be fined up to fifteen thousand (15'000) CHF and appropriate legal costs shall also be imposed.
- 59.** The FEI also requested that a fine of seven thousand five hundred (7,500) CHF be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI has incurred in pursuing this matter, namely two thousand (2,000) CHF.
- 60.** For the reasons set out above, the FEI respectfully requested that the FEI Tribunal issue a decision in respect of the PR in accordance with the following:
- 1) upholding the charge that the PR has violated Article 2.1 of the EAD Rules;
 - 2) imposing a period of Ineligibility of two (2) years on the PR, commencing on the day of the decision (the Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period);
 - 3) disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Articles 9 and 10.1.2 of the EAD Rules;
 - 4) fining the PR in the amount of seven thousand five hundred (7,500) CHF; and
 - 5) ordering the PR to pay the legal costs of two thousand (2,000) CHF that the FEI has incurred in these proceedings.

- The Position of the FEI regarding the APR:

- 61.** The FEI stated that the APR did absolutely nothing to ensure that no Prohibited Substance was administered to the competition horses at the Al Maghaweer Stables. They regarded it as all the more remarkable since the APR knew that the Tridenosen product, which contains a Prohibited Substance, was kept and used routinely at the Al Maghaweer Stables. Therefore, and as admitted by the APR in his submissions, the behaviour of the APR was highly negligent.
- 62.** Consequently, the FEI submitted that no reduction of the standard sanction as provided in the Article 10.2 of the EAD Rules is possible in the present

matter and the APR was sanctioned with two (2) years Ineligibility period if it was his first EAD Rule violation.

- 63.** Furthermore, the FEI noted that since this is the APR's second anti-doping rule violation, the applicable period of ineligibility must be assessed in accordance with Article 10.8.1 of the EAD Rules which states that: *'10.8.1 For a Person Responsible and/or member of the Support Personnel's second EAD Rule violation, the period of Ineligibility shall be the greater of:*

(a) six months;

(b) one-half of the period of Ineligibility imposed for the first EAD Rule violation without taking into account any reduction under Article 10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second EAD Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.'

- 64.** Therefore, taking into account that the APR was sanctioned with two (2) years Ineligibility period for his first anti-doping rule violation, then one-half of this period is one (1) year of Ineligibility. Moreover, as provided in the previous paragraphs, the applicable sanction for the present violation, if it was treated as a first anti-doping rule violation, would have been two (2) years Ineligibility period. Twice two (2) years Ineligibility period amounts to four (4) years of Ineligibility, and that is the greatest Ineligibility period among the three possible scenarios provided in the Article 10.8.1 of the EAD Rules.

- 65.** Consequently, the FEI submitted that the APR shall be sanctioned in accordance with articles 10.8.1 of the EAD Rules which provide for four (4) years period of Ineligibility for his second anti-doping rule violation under EADCMRs and that the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period.

Disqualification of Results for the APR

- 66.** The FEI does not submit any request for the disqualification of results obtained by the APR and Horse combination at the Event as this has been requested in the procedure against the PR.

Fine and Costs for the APR

- 67.** Article 10.2 of the EAD Rules provides that for a violation of an article 2.1, a Person Responsible shall be fined up to fifteen thousand (15'000) CHF with the appropriate legal costs shall also be imposed. The FEI respectfully requests that a fine of twelve thousand (12'000) CHF be imposed on the APR, and that the APR be ordered to pay the legal costs that the FEI has incurred in pursuing this matter, namely three thousand (3'000) CHF.
- 68.** For the reasons set out above, the FEI respectfully requested that the FEI Tribunal issue a decision:
- 1) upholding the charge that the APR has violated Article 2.1 of the EAD Rules;
 - 2) imposing a period of Ineligibility of four (4) years on the APR, commencing on the day of the decision (the Provisional Suspension served by the APR shall be credited against the imposed Ineligibility Period);
 - 3) fining the APR in the amount of twelve thousand (12'000) CHF; and
 - 4) ordering the APR to pay the legal costs of three thousand (3'000) CHF that the FEI has incurred in these proceedings.

VI. Jurisdiction

- 69.** 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 PR and APR are members of the UAE-NF, which are members of the FEI, as such the PR and APR are bound by the EAD Rules.

VII. The Decision

- 70.** 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 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 the findings of the laboratory are accurate. The Tribunal is further satisfied that the test results evidenced the presence of the Banned Substance in the A sample taken from the Horse at the Event. The Tribunal notes that the PR and APR did not challenge the accuracy of the test results or the positive findings and in fact they confirmed that such findings were due to a label mix-up between the Tripart and Tridenosen products.
- 71.** As a result, the Tribunal accepts that FEI has established the adverse

analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3 of the EAD Rules.

- 72.** Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the presence of a Banned Substance in a Horse's sample is two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 73.** In cases brought under the EADCMRs, 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, the PR and APR have the burden of proving that they bear "*No Fault or Negligence*" for the rule violation pursuant to Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*" pursuant to Article 10.5 of the EAD Rules.
- 74.** In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR and APR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
- 75.** As confirmed by various CAS panels as well as FEI Tribunals, the PR and APR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient however the Tribunal noted that the PR's and APR's assertions were corroborated by the statement from the technician who performed the injections and allegedly mixed up the Tripart and Tridenosen products²¹. Thus, given the explanations presented and examination of the exhibits provided and referenced throughout this Decision, the Tribunal finds that the PR and APR have established – on a balance of probability – how the Banned Substance of Diisopropylamine entered the Horse's system.
- 76.** In terms of the degree of fault/negligence for the rule violation, whilst the Tribunal notes the conclusions of the FEI in respect of the PR's behaviour, which they considered was highly negligent as detailed at paragraph 55 of this Decision, the Tribunal considers that the FEI has no reason or evidence to doubt that the PR does not do what he says he does. Furthermore, that whilst it is correct that as a matter of general principle that there was not an adequate amount of procedural surveillance at the stables for the administration of medicines, the PR in this case had no reason to suspect that the prescribed legal dose had not been given. However, the Tribunal notes that if the PR was present and looking after his horse at the time of travel as he should have been doing, he would have known of the initial

²¹ FEI Response dated 26 May 2021- Exhibit 21, Q. 6 Testimony of Technician dated 23 January 2021.

failure to dose and been very cognisant of the late administration of the medicines. The Tribunal notes that no explanation was provided in the PR's statements as to where he was at that time or what he was doing on that day to create this situation and to explain the PR's departure from the expected standard of behaviour, therefore the Tribunal considers that the finding of fault on behalf of the PR is established. Additionally, the Tribunal notes that there were no details provided by the FEI about the Horse travelling nor evidence of the distance or time to support the remarks by the FEI of the effect of travelling on horses (referenced at paragraph 49) of this Decision. The Tribunal further notes that the case has taken 18 months to get to this stage which is an excessive delay. Thus, the Tribunal agree with imposing a period of Ineligibility of two (2) years on the PR however given the delay in bringing these proceedings, the Tribunal will impose a reduced fine of five thousand (5,000) CHF and order the PR to pay the legal costs of two thousand (2000) CHF.

- 77.** The Tribunal agrees with the FEI's recommendation for the fine and costs in respect of the APR.

VIII. Disqualification of Results

- 78.** Since an EAD Rule has been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

IX. Sanctions

- 79.** In summary, the Tribunal imposes the following sanctions on the PR and APR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- a. upholds the charge that the PR and APR violated Article 2.1 of the EAD Rules;
 - b. disqualifies the result of the PR and Horse combination obtained in the Competition and the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Articles 9 and 10.1.2 of the EAD Rules;
 - c. imposes a period of Ineligibility of two (2) years on the PR and four (4) years on the APR. The period of the Provisional Suspension, effective

from 2 December 2019 is credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until 1 December 2021 and the APR will be ineligible until the 1 December 2023;

- d. the PR is fined in the amount of **five thousand Swiss Francs (CHF 5,000)** and will contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings;
 - e. the APR is fined in the amount of **twelve thousand Swiss Francs (CHF 12,000)** and will contribute **three thousand Swiss Francs (CHF 3,000)** for costs that the FEI has incurred in these proceedings;
- 80.** No PR and APR 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 authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 81.** Where a PR or APR who has been declared Ineligible violates the conditions as set out in paragraph 80 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will 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).
- 82.** 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.
- 83.** This Decision shall be notified to the PR/APR, the NF of the PR/APR and to the FEI.
- 84.** This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

FOR THE FEI TRIBUNAL

A handwritten signature in black ink, appearing to read "Hodson", is centered at the top of the page. The signature is written in a cursive style with a long, thin tail on the final letter.

Mr Christopher Hodson, One-Member Panel