

DECISION of the FEI TRIBUNAL

dated 14 October 2021

Mr Juan Manuel Luzardo
(FEI Case number: 2021/BS05 (2021/ATF06))

FEI Tribunal Hearing Panel:

Ms Diane Pitts (USA), One-member panel

FEI Tribunal reference: C21-0047

Horse / Passport: EXCELLENT/105FX10/MEX

Person Responsible / ID / NF: Juan Manuel LUZARDO/10055118/URU

Event: CSI4* – Balvanera (MEX) 17 – 21.03.2021, 2021_CI_0986_S_S_01

Date of Event: 20 March 2021

Prohibited Substance(s): Zilpaterol

Bar Code No.: 5600247

I. Factual background

- 1.** Mr Juan Manuel LUZARDO (FEI ID 10055118), the Person Responsible (**the PR**), is a rider for Uruguay.
- 2.** The Fédération Equestre Internationale (**the FEI**) together with the PR, (**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 PR participated, with the horse **EXCELLENT (the Horse)** (105FX10) in the CSI4* – Balvanera, Mexico between the 17-21 March 2021 (**the Event**). The Horse is registered with the Mexican National Federation (**the MEX-NF**). The PR is registered with the Uruguayan Equestrian Federation (**the URU-NF**), the latter being a member of the FEI and therefore is bound by the FEI EADCMRs¹.
- 4.** Blood and urine samples were collected from the horse on 20 March 2021 and sent to the FEI approved Laboratory, the LGC Laboratory (**the LGC**), in Cambridgeshire, UK, for analysis. The samples were divided into an A sample and B sample. The A Sample was analysed and identified the presence of Zilpaterol.
- 5.** Zilpaterol is a beta-agonist drug used as a feed additive to increase muscle mass in beef cattle and is classified as a Banned Substance under the 2021 FEI Equine Prohibited Substances List (**the FEI List**) and as an Atypical Finding (**ATF**) Substance under the 2021 FEI ATF Policy. An aim of the ATF Policy is to allow the equine anti-doping system to be more flexible when contamination is suspected since it provides the opportunity for more investigation/review before an Adverse Analytical Finding (**AAF**) is reported.
- 6.** On 20 April 2021, the FEI informed the PR, of an ATF under the 2021 FEI ATF Policy in relation to the positive finding of Zilpaterol. The PR was notified that the ATF was subject to further investigation before deciding if it would be brought forward as an Equine Anti-Doping Rule Violation and the PR was requested to provide the FEI and ATF Panel with additional information to assist in further investigation.

¹ FEI Equine Anti-Doping and Controlled Medication Regulations 3rd edition, changes effective 1 January 2021

7. During the ATF proceedings, the FEI reported that the PR was not represented by counsel. Although the PR provided some information to the FEI, he was unable to establish source at that stage. For this reason, on 1 June 2021, the ATF Panel decided that the case would be pursued as an AAF.²
8. The positive finding of Zilpaterol in the Horse's sample gave rise to an Equine Anti-Doping Rule Violation, which was communicated to the PR from the FEI via a Notification Letter (**the Notification Letter**) dated 7 June 2021. The Notification Letter informed the PR, in his capacity of the Person Responsible, along with the URU-NF and the MEX-NF of a violation of Article 2.1 (Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample) and Article 2.2 (Use of a Banned Substance and/or Banned Method) of the Equine Anti-Doping Regulations (**the EADRS**) based on the Laboratory's AAF of Zilpaterol.
9. As the Prohibited Substance found in the Horse's sample was a Banned Substance, the PR was provisionally suspended in accordance with Article 7.4.1 of the EADRs (as of the date the Notification letter was sent to the PR, 7 June 2021) and a provisional suspension of two months was imposed on the Horse from the 7 June 2021 until 6 August 2021.
10. The additional facts of the case will be referred to under section IV below.

II. Procedural background in front of the FEI Tribunal

11. By email dated 23 August 2021, the FEI submitted to the FEI Tribunal (**the Tribunal**) the Settlement Agreement signed by both the PR on 20 August 2021 and the FEI on 23 August 2021, the FEI also requested an immediate lifting of the Provisional Suspension imposed on the PR upon the Notification of the Rule Violation (in accordance with Art. 7.4.1 of the EADRs).
12. On 25 August 2021, the Parties were informed of the nominated Hearing Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named by 28 August 2021.
13. On 25 August 2021, both Parties informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.

² Exhibit 1 (ATF Panel Decision dated 1 June 2021).

III. Considering

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**"), 3rd edition, changes effective 1 January 2021.

FEI Equine Anti-Doping Rules ("**EADRs**"), 3rd edition, changes effective 1 January 2021.

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."

EADRs 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.”

EADRs Art. 9.1 “A violation of these EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result(s) of the Person Responsible and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes.

Where applicable, Consequences to teams are detailed in Article 11 below.

Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or elimination shall under no circumstances reverse the automatic Disqualification of the Result(s) mandated by this Article 9”.

EADRs Art. 10.1.2 “At all other Events at which these EAD Rules apply, an EAD Rule violation occurring during or in connection with an Event shall, upon the Decision of the FEI Tribunal, lead to Disqualification of all of the Person Responsible's results obtained in that Event, with any and all Horses, with all Consequences, including forfeiture of all medals, points and prizes, unless the Horse(s) tested negative in another Competition(s) prior to the Competition in which the EAD Rules were violated, in which case the result(s) obtained by the Person Responsible in that Competition(s) will not be Disqualified”.

EADRs Art. 10.8.2 Case Resolution Agreement “Where the Person Responsible and/or member of the Support Personnel and/or other Person admits an EAD Rule violation after being confronted with the EAD Rule violation by the FEI and agrees to Consequences acceptable to the FEI, at its sole discretion, then: (a) the Person Responsible and/or member of the Support Personnel and/or other Person may receive a reduction in the period of Ineligibility based on an assessment by the FEI of the application of Articles 10.1 through 10.7 to the asserted EAD Rule violation, the seriousness of the violation, the Person Responsible and/or member of the Support Personnel’s and/or other Person’s degree of Fault and how promptly the Person Responsible and/or member of the Support Personnel and/or other Person admitted the violation; and (b) the period of Ineligibility may start as early as the date of Sample collection or the date on which another EAD Rule violation last occurred. In each case, however, where this Article is applied, the Person Responsible and/or member of the Support Personnel and/or other Person shall serve at least one-half of the agreed-upon period of Ineligibility going forward from the earlier of the date the Person Responsible and/or member of the Support

Personnel and/or other Person accepted the imposition of a sanction or a Provisional Suspension which was subsequently respected by the Person Responsible and/or member of the Support Personnel and/or other Person.

The agreement shall be submitted to the FEI Tribunal for the sole purpose of the FEI Tribunal confirming that the above criteria have been fulfilled (or do not apply) and, where so confirmed 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 the case and will be published as provided in Article 14.3 The Decision by the FEI to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of, the period of Ineligibility and the confirmation of the case resolution agreement by the FEI Tribunal are not subject to appeal under Article 13.

If so requested by a Person Responsible and/or member of the Support Personnel and/or other Person who seeks to enter into a case resolution agreement under this Article, the FEI shall allow the Person Responsible and/or member of the Support Personnel and/or other Person to discuss an admission of the EAD Rule violation with it subject to a Without Prejudice Agreement.

EADRs Art. 10.9.2 "An EAD violation for which a Person Responsible and/or member of the Support Personnel and/or other Person has established No Fault or Negligence shall not be considered a prior violation for purposes of this Article".

IV. The Parties' Submissions

14. On 30 July 2021, the PR submitted a witness statement to the FEI, with a detailed explanation for the atypical finding of Zilpaterol. In summary the PR stated that Red Horse Farms S De RL De CV (**the Farm**) supplied hay to the PR for over five years, including on 10 February and 12 March 2021.³ It was submitted that the farm also had sheep, which were given a feed containing Zilpaterol.⁴ He furthered that the sheep's manure (a combination of faeces, bedding and leftover feed) is collected from the sheep's barn and transported around the Farm on a flatbed truck for use as a natural fertiliser on crops grown on the Farm (though not the hay). The PR explained the usual process wherein the hay was collected from the fields and brought to the Farm's storage facilities on the same truck

³ Exhibit 3 (Witness Statement of Mr. Juan Manuel Luzardo dated 30 July 2021, and Exhibits JL1-4).

⁴ Exhibit 4 (Witness Statement of Mr. Roberto Gomez Quintana dated 30 July 2021, and Exhibit RG1).

and that the truck was normally cleaned thoroughly between uses (so that the different materials do not come into contact with each other on the truck as there was a danger that small residues of sheep's manure would remain on the truck if it was not cleaned).

- 15.** However, in spite of the usual protocol outlined at paragraph 14, it was further discovered by the PR that at least once between 20 and 25 January 2021, the truck that transported both the hay bales and sheep's manure was not cleaned after transporting the manure because the Farm workers had to collect the hay quickly to avoid a rain shower, which meant that the hay on the truck at that time would have come into contact with the sheep's manure.⁵ The Farm owner had not considered this until the investigation took place, but as the sheep were given a feed containing Zilpaterol, it was possible that the manure contained Zilpaterol – and therefore the hay may have been contaminated by Zilpaterol through sheep's manure left on the truck⁶ resulting in cross-contamination to the Horse via the haybales.
- 16.** The PR also submitted in his witness statement dated 30 July 2021 that he abides by the FEI rules seriously and has strict anti-doping protocols in place to ensure that no breaches of the EADCMRs occur.
- 17.** The owner of the Farm also submitted a witness statement dated 30 July 2021 wherein he explained that that he grows crops for the American market and as such he adheres to very strict cross-contamination cleaning protocols to comply with the high standards of compliance required for export. He submitted that he had no idea that the hay was inadvertently contaminated with Zilpaterol until it was discovered how the truck remained unwashed on a particular day and residues of manure were left on the truck.
- 18.** The PR also asked an Expert to review the circumstances⁷. The Expert confirmed that if the sheep were given the recommended dose of feed, the sheep's manure would contain a certain amount of Zilpaterol; and if the hay was contaminated with a sufficient amount of Zilpaterol and the Horse ate the quantity of hay it is normally given, it would have returned the positive finding of Zilpaterol that was found in the Horse. The FEI asked its own Expert to review the circumstances. The FEI's Expert agreed that cross-contamination of the Horse's hay through the sheep's manure was scientifically plausible⁸.

⁵ Exhibit 4- Witness Statement of Mr Quintana dated 30 July 2021.

⁶ Exhibit 4- Witness Statement of Mr Quintana dated 30 July 2021.

⁷ Exhibit 5 (Expert Report of Mr. Ihar Nekrashevich dated 28 July 2021).

⁸ Exhibit 6 (Expert Report of Dr. Stuart W Paine dated 17 August 2021).

- 19.** On 23 August 2021, the FEI submitted to the Tribunal a Settlement Agreement between the FEI and PR for approval and adjudication, since the FEI was satisfied that the PR established, on a balance of probabilities, that the source of the Zilpaterol was the result of cross-contamination from sheep's manure to hay which was consumed by the Horse and as such the PR had demonstrated that he bears No Fault or No Negligence for the EADR Violation that was committed.

V. The Agreement between the Parties.

Agreement between the Parties:

*** Quote***

3 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:

- 3.1 The Parties agree on what follows, in accordance with Article 10.8.2 of the EAD Rules.
- 3.2 The PR:
- a. admits a violation of Article 2.1 of the EAD Rules;
 - b. waives his right to a final hearing; and
 - c. cooperates with the FEI fully with respect to his case.
- 3.3 The FEI is satisfied that the PR has established:
- a. on a balance of probabilities how the Zilpaterol entered the Horse's system;
 - b. that he bore No Fault or Negligence for the rule violation; and
 - c. that the PR could not reasonably have known that the Horse's Hay was contaminated with Zilpaterol.
- 3.4 The Parties therefore agree that:
- a. the PR bears no fault or negligence for the violation. The PR shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e., two years) shall be eliminated;
 - b. in accordance with Article 10.9.2 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.9 (*Multiple Violations*) of the EAD Rules;

- c. in accordance with Articles 9.1 and 10.1.2 of the EAD Rules, the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
 - d. the PR shall not incur any fines or legal costs;
 - e. each party will bear its own legal and other costs incurred in connection with these proceedings; and
 - f. no other sanctions (other than the disqualification of the results at the Event in accordance with Article 9 and Article 10.1.2 and of the EAD Rules) should apply in this case.
- 3.5 This Agreement is made in accordance with Article 10.8.2 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Parties hereby request that the FEI Tribunal issues a Decision incorporating the terms of this Agreement.
- 3.6 The Parties acknowledge and agree that pursuant to Article 14.3 of the EAD Rules, the Decision will be made public by the FEI.
- 3.7 This Agreement will constitute the Decision for this case. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 13.2 of the EAD Rules.
- 3.8 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. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

End Quote

VI. Jurisdiction

- (a) 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.
- (b) The PR is a member of the National Federation of Uruguay, and as such is subject to the EAD Rules.
- (c) Article 10.8.2 of the EADRs provides for agreements to be reached

between parties.

- (d) As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VII. Approval of Agreement

- 20.** Having reviewed the Case Summary, the Full Reasoning for the Agreement, terms of the Agreement, in addition to the Tribunal's decision to lift the Provisional Suspension on 25 August 2021 based on the duly weighted explanations provided by the FEI in the Settlement Agreement submitted to the Tribunal on 23 August 2021, wherein the FEI accepts on a balance of probability that the source of the prohibited substances in the Horse's sample –Zilpaterol, was the cross-contamination from the residues of the sheep's manure in the truck to the haybales. Following which the haybales were eventually consumed by the Horse, therefore, the PR had demonstrated that he bears No Fault or No Negligence for the EADR violation committed.
- 21.** Furthermore, the Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding the source of the Prohibited Substance that was established, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law.
- 22.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADRs.
- 23.** 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 Case 2021/BS05 (2021/ATF06) EXCELLENT.

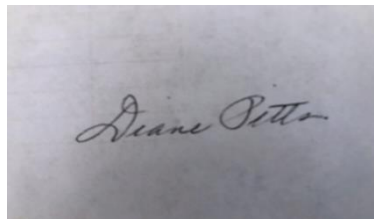
VIII. Decision

- 1) The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Juan Manuel LUZARDO, concerning the Case 2021/BS05 (2021/ATF06) EXCELLENT is 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.
- 2) This Decision is subject to appeal in accordance with Article 13.2 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.

- 3) This Decision shall be notified to the PR, the FEI, the Secretary General of the Uruguay-NF and the Mexican-NF for the PR and the Horse Respectively.
- 4) This Decision shall be published in accordance with Article 14.3 of the EADRs.

FOR THE FEI TRIBUNAL

A rectangular box containing a handwritten signature in cursive script that reads "Diane Pitts".

Ms. Diane Pitts, One-Member Panel