

DECISION of the FEI TRIBUNAL

dated 12 November 2021

Mr Domingo DE LA ROSA PERERA

(FEI Case number: 2019/BS38 MAVER JUBAL)

FEI Tribunal Hearing Panel:

Mr Mohammed ALSaberi one-member panel

FEI Tribunal Reference: C21-0045

Horse/Passport: MAVER JUBAL/104LQ46/ESP

Person Responsible/ID/NF: Domingo DE LA ROSA PERERA/10071417/ESP

Event/ID: CEI3* 160 - Castelsagrat (FRA), 2019_CI_0432_A_H2_01

Date of Event: 07-10.06.2019

Prohibited Substances: Oripavine and Morphine

Bar Code Nos.: 5583704

I. Factual background

- 1.** Mr. Domingo DE LA ROSA PERERA (FEI ID 10071417), the Person Responsible (**the PR**), is a rider for Spain.
- 2.** The Fédération Equestre Internationale (**the FEI and 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, MAVER JUBAL (**the Horse**) at the CEI3* 160 - Castelsagrat (FRA), 2019_CI_0432_A_H2_01 (**the Event**). The registered Trainer of the Horse in the FEI database at the time of the Event was also Mr. Domingo DE LA ROSA PERERA.
- 4.** According to Article 118.3 of the FEI General Regulations (**the GRs**), *'the Person Responsible (PR) 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 the matter at stake, the rider and the registered Trainer of the Horse in the FEI Database were the same person and are considered as the PR.
- 5.** Urine and Blood samples were collected from the Horse on 7 June 2019 and sent to the FEI approved laboratory, (**the Laboratory**), the LGC, Newmarket Road, Fordham, Cambridgeshire, UK, for analysis. The Horse's samples were divided into an "A sample" and "B sample", which are collectively (**the Sample**) with reference number 5583704.
- 6.** The laboratory analysis of the A sample reported an adverse analytical finding (**AAF**) for Oripavine and Morphine in the urine sample, all of which are "Prohibited Substances" under the FEI's Equine Anti-Doping and Controlled Medications Regulations (**the EADCMRs**).
- 7.** Oripavine, is an opioid with analgesic effect and is classified as a Banned Substance under the 2019 FEI Equine Prohibited Substances List. Morphine is an opioid with an analgesic effects and is classified as a Controlled Medication Substances under the 2019 FEI Equine Prohibited Substances List. Oripavine and Morphine are Prohibited Substances identified as Specified Substances. Specified Substances may enter a Horse's system

inadvertently due to a credible non-doping explanation. This specific category may allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a decision on sanction.

8. The positive findings of Oripavine and Morphine in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EADCMRs. In particular, the EADCMRs applicable to these proceedings were adopted by the 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 Most relevantly for present purposes, Article 2.1 of the EAD Rules² prohibits *'The presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample'*. Furthermore, under Article 2.2 of the EAD Rules, the *'Use or Attempted Use of a Banned Substance or Banned Method'* are prohibited.

II. Initial Proceedings

9. On 22 August 2019, the FEI Legal Department officially notified the PR through the National Federation of the Germany (**the ESP-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**). The FEI decided not to provisionally suspend the PR before having indication of the source of the positive finding since the Banned Substance is classified as a Specified Substance. However, in accordance with Article 7.4.1 EAD Rules, the Horse was provisionally suspended for two months from 22 August 2019 to 21 October 2019.
10. The Notification Letter also informed the PR that he had the right to request that the Horse's B Sample be analysed. To date, the PR did not request for the B sample to be analysed, thus the right to request a B sample analysis has therefore been waived in accordance with Article 7.1.5 of the EAD Rules.

¹ Introduction to the EADCMR at p 2.

² Article 10.8.6 EAD Rules: Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method- Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction.

III. Further Proceedings

- 11.** By email dated 20 July 2021, the FEI submitted its request to the FEI Tribunal (**the Tribunal**) for the appointment of a hearing panel.
- 12.** On 13 August 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 17 August 2021. The PR was also granted the opportunity to respond to the FEI's allegations by submitting their respective positions by 2 September 2021. The PR was 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 6 September 2021, failing which the right for an oral submission would be deemed as waived.
- 13.** On 16 August 2021, the FEI and the PR, acknowledged receipt of the Tribunal's correspondence and that they did not have any objections to the constitution of the hearing panel.

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 ("**EADCM Regulations**"), 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 Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1st, January 2019.

FEI Veterinary Regulations ("**VRs**"), 14th edition 2018, effective January 1st, 2020, Arts. 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. 3.1: "Burdens 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.

EAD Rules Art. 10.8.6: "Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method. Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction".

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

ECM Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

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".

V. The Submissions of the PR

14. The PR provided several rounds of submissions in relation to the present matter which are detailed below:

- 1) Written request from PR to the FEI seeking an extension for reply to the charges as they were conducting an investigation into source of

AAFs to in order to provide an explanation for the detection of the Prohibited Substances in the Horse's urine;

- 2) Further written request from the PR to finish their investigation into the AAFs detected in the Horse;
- 3) Statement and supporting evidence from the PR (sent to FEI by ESP-NF) in respect of the AAFs dated 22 October 2021;
- 4) Written submissions re FEI queries from the PR (submitted by the ESP-NF);
- 5) Invoice dated 25 March 2019 of KENTUCKY SPORT PLUS from PR.

- 15.** The PR stated in his submission that he and his father owned a small stable comprised of six (6) horses, all competing or preparing to compete in the discipline of Endurance; the horses were mainly stabled in Tenerife in Spain's Canary Islands; however, they participate in competitions in the European continent (Spain, France, Portugal);
- 16.** The PR confirmed that he takes care of the horses, and it is his responsibility to control the food and drinks given to all his horses in addition to other responsibilities;
- 17.** The PR confirmed that the horses were fed with horse feed, forage, alfalfa and water; they did not receive any supplements;
- 18.** The PR explained that when any special treatment was required by the horses, due to illness or injury, one of the treating veterinarians would administer whatever they considered appropriate pursuant to the parameters under the FEI Rules;
- 19.** The PR submitted that he was very surprised when he received a Notification Letter from the FEI regarding the Equine Anti-doping Rule Violation as he had never administered any Prohibited Substance to the Horse;
- 20.** Furthermore, the PR submitted statements from the two treating veterinarians of the Horse:
 - Main veterinarian located in the Tenerife Island, who enumerated all vaccinations and medical treatments provided to the Horse in the year prior to the Event (none of those treatments mentioned the use of Morphine or Oripavine);

- Another veterinarian located in the Spanish mainland who examined the Horse after its arrival to Barcelona who provided supervision at the Event and confirmed that no medication was administered to the Horse at that time; Furthermore, the second veterinarian stressed that Oripavine cannot be found in any veterinary medication in Spain, and he provided an official website where this can be re-checked.
- 21.** Following the receipt of the Notification Letter from the FEI, the PR confirmed that he carried out an extensive research in respect of the two Prohibited Substances and discovered that:
- Morphine is a treatment product that can be acquired only through a qualified and licensed professional;
 - Oripavine is not produced in any synthetic form and is not commercialized due to its high toxicity;
 - Presence of Morphine and Oripavine in the same Sample is a strong indication that the Prohibited Substances did not come from a pharmaceutical product but rather is of plant origin, namely ingestion of the poppy seed (*Papaver somniferum*); This has been already confirmed also by the FEI Tribunal in the following case law: 2014/BS03 HEARTBEAT, 2014/BS04 KINKA's BOY, 2014/BS05 VITESS SC.
- 22.** After considering the research as detailed above at paragraph 21, the PR tried to inspect the feed and forage given to the Horse around the time of the Event, as the PR believed that the only way in which Oripavine and Morphine could have entered the Horse's body was through food contamination;
- 23.** The PR stated that his horses are mainly based on Tenerife Island where the production of the horse feed and hay is very limited; therefore, the PR imported the horse feed and hay from the Spanish mainland sometimes;
- Feed contamination scenario**
- 24.** The PR stated that around the time of the AAF the Horse (and all other PR's horses) were fed with the KENTUCKY SPORT PLUS feed (**the Feed**) from the Company "Horse 1"(**the Manufacturer**);

- 25.** The PR stated that he started to use this Feed in 2015 and he also submitted an invoice dated March 2019 confirming the use of this Feed around the time of the AAF;
- 26.** The PR noted that the Feed was delivered in correctly sealed bags, with the relevant labels which listed the ingredients (adapted to the international regulations and were not prohibited);
- 27.** After the AAF, the PR contacted the Managing Director of the Manufacturer and asked for an analysis of the feed supply that he purchased during the year 2019 mentioning that there was possible feed contamination which contained Prohibited Substances;
- 28.** The Managing Director of the Manufacturer replied to the PR's request and stated that:

"The Kentucky Sport Plus feed is produced by the mills located in Ciudad Real utilizing local feedstuff to produce a high-quality feed at a reasonable price. None of the ingredients included in the formula are on the list of prohibited or controlled substances as per the FEI database. However, since in Spain few horses are subject to doping testing, the procedures and analysis that have been developed in the rest of Europe to reduce the risk of contamination by naturally occurring prohibited substances have not been adopted by the local mills. Although there is extensive control as to the quality of the feedstuff entering the mill, hygiene, starch and protein content etc. there is no testing done to ascertain if there is contamination to the feed due to the presence of naturally occurring prohibited substances such as poppy seeds. Also no sample of the productions are maintained to cross check in case of a doping positive as is done in mills that habitually provide feed to horses participating in international competitions."

- 29.** Therefore, the PR noted that it was possible that the Feed was contaminated by the presence of naturally occurring poppy seed (*Papaver somniferum*) which was mixed with other ingredients of the Feed;
- 30.** The PR stressed that the Manufacturer was a high-quality brand and it advertises on the official website as:

"En Horse1 somos anti-dopaje y todos nuestros productos son al 100% reglamentarios, asi de simple!"

*"At **Horse1** we won't sell any products that are not appropriate for use for horses competing under FEI or Jockey Club Rules. We don't want that sort of product in our warehouse. And we check. It's that simple."*

31. Therefore, the PR and his father stated they were really surprised when they learnt the Feed may have been contaminated with Prohibited Substances since they checked the ingredients of the Feed (which the Manufacturer officially stated were 100% free from any prohibited substances);
32. Finally, the PR submitted that following the AAF, the PR changed to NANTA 4EQUUS feed as *"it was present in many other endurance stables and was highly recommended by other owners. Also, this provider offered better traceability."*
33. The PR also stated that he was cautious in his daily cleaning habits.

Forage contamination scenario

34. The PR then addressed the forage contamination scenario and stated that around the time of the AAF, the PR used forage FIBRA RAYGRAS 380 (**the Forage**) purchased from DENIZ MARTIN SL (**the Company**);
35. The PR stated that he asked the manager of the Company to find out if any analysis existed in respect of the forage imported from the Spanish mainland to the Canary Islands;
36. The Company confirmed that they do not conduct analysis of their products and furthermore the manager of the Company stated that the majority of their forage is imported from Castilla y Leon where (according to the Spanish Government) there is more than 13000ha dedicated to the controlled opium poppy farming;
37. Consequently, the PR noted that it was also possible that the Forage given to the Horse around the time of the positive testing was contaminated by the poppy seed (*Papaver somniferum*);
38. Finally, given the high probability of the Prohibited Substances coming from the contaminated Feed and/or Forage, the PR requested that No Fault or Negligence provision shall be applied in his case (Article 10.4 of the EAD Rules); The PR supported his request and referred to the previous FEI case law with similar factual circumstances (2014/BS03 HEARTBEAT, 2014/BS04

KINKA's BOY, 2014/BS05 VITESS SC) where this provision was ultimately applied.

Written Response of the FEI

- 39.** In respect of the violation of the EADCMRs of the PR, 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'.
- 40.** Instead, the FEI noted that 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 Oripavine and Morphine constituted sufficient proof of the violation of Article 2.1 of the EAD Rules.
- 41.** The FEI also pointed out that the PR did not dispute the presence of Oripavine and Morphine in the Horse's Sample. Accordingly, the FEI respectfully submitted that it discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.

Disqualification of results

- 42.** The FEI also noted that in respect of these proceedings Article 9 of the EAD Rules was applicable which provided 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 will be applied 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. In addition, the FEI explained that since this is a case involving Prohibited Substances, 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 EAD Rules.

Presumption of Fault

- 43.** The FEI submitted that as a result of the presumption of fault, Article 10.2 of the EAD Rules provided that a PR 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 Tribunal (it being his burden of proof, on the balance of probability³):
- How the Prohibited Substances (here, Oripavine and Morphine entered into the horse's system; and
 - 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
 - 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).
- 44.** The FEI further explained that if the PR failed to discharge this burden, the presumption of intentional administration to enhance performance stands, and therefore the presumptive two-year ban under Article 10.2 is applied.
- 45.** In respect of the 'threshold' requirement and proving how Oripavine and Morphine entered into the Horse's system, the FEI referred to the EAD Rules which 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 proves how the substance entered into the Horse's system. They furthered that this requirement must be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.

³ Art 3.1 EADR

- 46.** The FEI submitted in this context that the PR must provide clear and convincing evidence to prove how Oripavine and Morphine entered the Horse's system. However, in these proceedings, the FEI noted the PR submitted that the Prohibited Substances most probably entered the Horse's system through the Feed and/or Forage which were contaminated with the poppy seed (*Papaver somniferum*).
- 47.** The FEI also noted the following arguments raised by the PR in the present proceedings and agreed with the following:
- Morphine and Oripavine are Prohibited Substances identified as Specified Substances. Specified Substances may enter a Horse's system inadvertently due to a credible non-doping explanation. This specific category allows the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when issuing a sanctioning decision;
 - Whereas Morphine is a medicinal product (used both in humans and animals) and can be acquired through a qualified and licensed professional in most of the countries in the world, Oripavine, to the best knowledge of the FEI, is not produced in any synthetic form and is not commercialized due to the narrow therapeutic indexes because of severe toxicity⁴;
 - Therefore, the mere presence of Morphine in combination with Oripavine in a Horse's sample strongly indicated a potential ingestion of poppy seed and/or feed contaminated with poppy seed.
 - Opium poppy, *Papaver Somniferum*, contains more than 40 different alkaloids. The five main alkaloids of *Papaver somniferum* are Morphine, Codeine, Thebaine, Papaverine and Noscapine. Morphine is the dominant alkaloid and a strong naturally occurring pain reliever. Codeine and Noscapine are used as cough suppressant and Papaverine is a smooth muscle relaxant. Thebaine is not directly used therapeutically but is industrially converted into other pain relievers. Oripavine is one of the major metabolites of Thebaine;
 - Therefore, if a horse ingested a poppy seed plant, the metabolised alkaloids in the horse's body may have resulted in Oripavine and Morphine findings in the Horse's sample;

⁴ See for example: <https://en.wikipedia.org/wiki/Oripavine>,
https://www.who.int/medicines/areas/quality_safety/6.3bOripsynthesis_LabSS_UNODC.pdf

- This is supported by scientific literature which has already been confirmed in several decisions of the FEI Tribunal for example in the following Anti-Doping cases: 2014/BS03 HEARTBEAT, 2014/BS04 KINKA's BOY, 2014/BS05 VITESS SC, 2016/BS06 DENDROS, 2016/BS09 GRANADA, 2017/BS29 CONCORDIA 7, 2018/BS15 TARYSMART, 2019/BS32 ESA-35. (NB: In fact, Anti-Doping Violations involving poppy flowers instigated the introduction of the FEI category of "Specified Substances".)
- 48.** Furthermore, the FEI noted that the Manufacturer of the Feed confirmed that the Feed *"is produced by the mills located in Ciudad Real utilizing local feedstuff to produce a high quality feed at a reasonable price"* and *"although there is extensive control as to the quality of the feedstuff entering the mill, hygiene, starch and protein content etc. there is no testing done to ascertain if there is contamination to the feed due to the presence of naturally occurring prohibited substances such as poppy seeds."* What is more, when looking at the map of the occurrence of the poppy seed in Spain, one can immediately spot that this plant is commonly growing around Ciudad Real as well as the whole region of the Castilla La Mancha⁵.
 - 49.** In addition, the FEI noted that Company providing Forage to the PR stated that the majority of their forage is imported from the region of Castilla y Leon where (according to the Spanish Government) there is more than 13000ha dedicated to the controlled opium poppy farming.
 - 50.** Therefore the FEI recognised that although the PR's attempt to test the samples of the Feed and Forage given to the Horse around the time of the positive sample, proved unsuccessful (as no such samples were kept neither by the Manufacturer of the Feed nor by the Company selling the Forage), both the Manufacturer and the Company indirectly confirmed that it was possible that their products might have been contaminated with the poppy seed plants as the Feed and the Forage were produced in regions where those plants are either commonly occurring or are specifically grown.
 - 51.** Moreover, the FEI submitted that they could not find any veterinary product nor human medication nor food supplement containing Oripavine and sold commercially, and therefore it was most likely that Oripavine entered the Horse's body through ingestion of the poppy seed. Similarly, the fact that the Morphine was found in the sample together with Oripavine pointed to the conclusion that Morphine was also of a vegetable and not synthetic origin. Accordingly, given all of the particulars presented by the PR

⁵ See for example: <https://conecte.es/index.php/es/plantas/1589-papaver-somniferum/mapa-localizaciones>

(including the scientific evidence regarding Oripavine and Morphine, testimonies provided by the Manufacturer of the Feed, the Company distributing the Forage and the two veterinarians of the Horse, as well as the common occurrence of the poppy seed plant in the two relevant regions in Spain), the FEI agreed that the PR had established on the balance of probabilities that Oripavine and Morphine must have entered the Horse's system through the Feed and/or Forage which were contaminated with the poppy seed plant (*Papaverum somniferum*).

Presumption of Fault

52. In relation to the degree of "Fault" and "Negligence" by the PR for the rule violation, the FEI noted that 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*".
53. Furthermore, the FEI noted that it was 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."

- 54.** In the present matter the FEI recognised that the Prohibited Substances most probably originated from contaminated Feed and/or Forage.
- 55.** The FEI noted that the PR stated that he chose the Manufacturer as it is a high-quality brand, and it advertised itself as "100% anti-doping". Indeed, the PR re-checked the label of the Feed and none of the ingredients was listed as a Prohibited Substance.
- 56.** The FEI acknowledged that the PR was completely unaware, until the current case, that certain plants commonly growing in Spain could be the source of the Prohibited Substances when ingested by horses. Following the positive test of the Horse, the PR changed the feed and the producer to another brand which offered "*better traceability*" in case of a positive finding.
- 57.** Consequently, the FEI agreed with the PR that he established on the balance of probabilities that he bears No Fault or Negligence for the current positive finding in his Horse's Sample and qualifies for the application of the Article 10.4 of the EAD Rules – elimination of the period of ineligibility. This was consistent with other case law and FEI Tribunal decisions concerning Prohibited Substances coming from the contaminated feed and/or forage⁶.

Fine and Costs

- 58.** In respect of the matter of fines and costs, the FEI referred to Article 10.2 of the EAD Rules which provided that for a violation of an article 2.1, a PR shall be fined up to fifteen thousand (15'000) CHF and appropriate legal costs shall also be imposed. However, the FEI noted that the FEI Guidelines for Fines and Contributions towards Legal Costs provided that in cases involving elimination of the ineligibility period based on No Fault or Negligence provision there shall be no fine imposed on the PR and each party shall bear its own costs incurred in connection with the proceedings.

Conclusion

- 59.** In summary and considering all the particulars of these proceedings, the FEI requested the following prayers for relief:

⁶ See for example: [2014/BS03 HEARTBEAT](#), [2014/BS04 KINKA's BOY](#), [2014/BS05 VITESS SC](#), 2016/BS06 DENDROS, [2016/BS09 GRANADA](#), 2017/BS29 CONCORDIA 7, [2018/BS15 TARYSMART](#), 2019/BS32 ESA-35 (for cases involving Oripavine and Morphine) or [2017/BS31 HSM CORNELIO](#), [2020/BS09 LINKIN PARK](#) & [2020/BS 10 COME BACK](#), 2019/BS24 CAROLINE (for cases involving Ractopamine)

- upholding the charge that the PR has violated Article 2.1 of the EAD Rules;
- confirming that the PR established on a balance of probabilities how Oripavine and Morphine entered the Horse's body;
- confirming that the PR bears No Fault or Negligence for the Rule Violation and therefore he shall not serve any period of Ineligibility and the otherwise applicable period of Ineligibility shall be eliminated in accordance with the Article 10.4 of the EAD Rules;
- confirming that this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules in accordance with the Article 10.8.3 of the EAD Rules;
- 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; and
- ordering that each Party shall bear its own legal costs incurred in connection with these proceedings.

VI. Jurisdiction

60. 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 is a member of the ESP-NF, which is a member of the FEI, as such the PR is bound by the EAD Rules.

VII. The Decision

61. Given the FEI's single charge of Article 2.1 of the EAD Rules and the wording of Article 10.8.6 of the EAD Rules, this decision will refer to the EAD Rules only as previously noted at paragraph 8 of this Decision. 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 Prohibited Substances in the A sample taken from the Horse at the Event. The Tribunal notes that the PR did not challenge the accuracy of the test results or the AAFs.

- 62.** As a result, the Tribunal accepts that FEI has established the AAFs and has sufficiently proven the objective elements of the violation in accordance with Article 3 of the EAD Rules.
- 63.** 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.
- 64.** 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 has 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.
- 65.** In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
- 66.** As confirmed by various CAS panels as well as FEI Tribunals, the PR must present facts substantiated with concrete evidence to establish how the prohibited substance entered the Horse's system. Speculation or theoretical possibilities are not sufficient. The Tribunal notes that the PR submitted various arguments in the form of scientific evidence regarding Oripavine and Morphine, testimonies provided by the Manufacturer of the Feed, the Company distributing the Forage and the two veterinarians of the Horse, as well as the common occurrence of the poppy seed plant in the two relevant regions in Spain to support the origin of the source as detailed in the evidence presented by the PR at section V of this Decision. As a result, the Tribunal finds that the PR established – on a balance of probability – how the Prohibited Substances entered the Horse's system *i.e.*, via a source of contaminated feed and/or forage⁷ and that he bears No Fault or Negligence for the current positive finding in his Horse's Sample and qualified for the application of the Article 10.4 of the EAD Rules – elimination of the period of ineligibility.
- 67.** The Tribunal further agreed with the FEI's recommendation that no fine shall be imposed on the PR and each party shall bear its own costs incurred

⁷ See for example: [2014/BS03 HEARTBEAT](#), [2014/BS04 KINKA's BOY](#), [2014/BS05 VITESS SC](#), [2016/BS06 DENDROS](#), [2016/BS09 GRANADA](#), [2017/BS29 CONCORDIA 7](#), [2018/BS15 TARYSMART](#), [2019/BS32 ESA-35](#) (for cases involving Oripavine and Morphine) or [2017/BS31 HSM CORNELIO](#), [2020/BS09 LINKIN PARK & 2020/BS 10 COME BACK](#), [2019/BS24 CAROLINE](#) (for cases involving Ractopamine)

in connection with the proceedings.

VIII. Disqualification of Results

68. 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

69. In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- a. upholds the charge that the PR violated Article 2.1 of the EAD Rules;
- b. confirms that the PR established on a balance of probabilities how Oripavine and Morphine entered the Horse's body;
- c. confirms that the PR bears No Fault or Negligence for the Rule Violation and therefore he shall not serve any period of Ineligibility and the otherwise applicable period of Ineligibility shall be eliminated in accordance with the Article 10.4 of the EAD Rules;
- d. confirms that this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules in accordance with the Article 10.8.3 of the EAD Rules;
- e. disqualifies 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; and
- f. orders that each Party shall bear its own legal costs incurred in connection with these proceedings.

70. 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.

71. This Decision shall be notified to the PR and to the NF of the PR and to the FEI.

- 72.** This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

FOR THE FEI TRIBUNAL

A handwritten signature in blue ink, consisting of a large, stylized 'S' or 'M' shape with a horizontal line crossing through it.

Mr. Mohammed ALSaberi, One-Member Panel