

DECISION of the FEI TRIBUNAL

dated 19 November 2021

Mr HARM LAHDE

(FEI Case number: 2019/BS47 OAK GROVE'S AMERICANA)

FEI Tribunal Hearing Panel:

Mr Martin Gibbs one-member panel

FEI Tribunal Reference: C21-0043

Horse/Passport: OAK GROVE'S AMERICANA/105WA18/GER

Person Responsible/ID/NF: Mr. Harm LAHDE/10092840/GER

Event/ID: CSI3*- Oldenburg (GER), 2019_CI_0034_S_S_02

Date of Event: 31.10-03.11.2019

Prohibited Substances: Oripavine, Morphine and Codeine

Bar Code Nos.: 5586531

I. Factual background

- 1.** Mr. Harm LAHDE (FEI ID 10092840), the Person Responsible (**the PR**), is a rider for Germany.
- 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, OAK GROVE'S AMERICANA (**the Horse**) at the CSI3*- Oldenburg (GER), 2019_CI_0034_S_S_02 held from 31 October 2019 to 3 November 2019 (**the Event**).
- 4.** Urine and blood samples were collected from the Horse on 2 November 2019 and sent to the FEI approved laboratory, (**the Laboratory**), the LGC, Newmarket Road, Fordham, Cambridgeshire, UK, for analysis. The Horse's urine and blood samples were divided into "A samples" and "B samples", with reference number 5586531.
- 5.** The laboratory analysis of the urine A sample reported an adverse analytical finding for Oripavine, Morphine and Codeine, all of which are "Prohibited Substances" under the FEI's Equine Anti-Doping and Controlled Medications Regulations (**the EADCMRs**).
- 6.** Oripavine, is an opioid with analgesic effect and is classified as a Banned Substance under the 2019 FEI Equine Prohibited Substances List. Morphine and Codeine are opiates with analgesic effects and are classified as a Controlled Medication Substances under the 2019 FEI Equine Prohibited Substances List. Oripavine, Morphine and Codeine 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.
- 7.** The positive finding of Oripavine, Morphine and Codeine in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EADCM Regulations. 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.

8. 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

9. On 2 December 2019, the FEI Legal Department officially notified the PR by letter via the National Federation of Germany (**the GER-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 an 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 2 December 2019 to 1 February 2020.
10. The Notification Letter also informed the PR that he had the right to request that the Horse's B sample be analysed. The PR did not request an analysis of the B sample.

III. Further Proceedings

11. By email dated 10 August 2021, the FEI submitted a request to the FEI Tribunal (**the Tribunal**) for the appointment of a hearing panel.

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.

12. On 27 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 1 September 2021. The PR was also granted the opportunity to respond to the FEI's submissions by 16 September 2021. The PR was also informed that the Tribunal will generally decide such cases based on written submissions but that the Parties had the right to request an oral hearing.
13. On 27 August, legal counsel for PR, acknowledged receipt of the Tribunal's correspondence.
14. On 30 August 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
15. On 30 August 2021, the PR confirmed he was not going to lodge any further written submissions or request a hearing in relation to the present matter.

IV. Summary of Legal Authority

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

Statutes 24th edition, effective November 20th, 2018 ("**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 EADCMRs 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

- 16.** The PR provided four rounds of submissions in relation to the present matter respectively dated 15 July 2020, 24 March 2021, 23 April 2021 and 13 May 2021.

Those submissions included the documents as listed below:

- (i) Written submissions providing possible explanations for the detection of the Prohibited Substances in the Horse's urine;
 - (ii) A scientific opinion and conclusions from Dr Stephane Montavon, an equine veterinarian, DVM, member of the SAEM (Swiss Association of Equine Medicine) and of the AAEP (American Association of Equine Practitioners) **(the Expert 1)**;
 - (iii) Scientific opinion of Dr Robert Hertzsch, from the Faculty of Veterinary Medicine Institute of Pharmacology and Toxicology at the University of Leipzig **(the Expert 2)**;
 - (iv) Statements of the PR, his groom **(the Groom)** and his trainer **(the Trainer)**;
 - (v) Statement of the veterinarian of the Horse describing the examinations and treatments given to the Horse in the year prior to the positive test;
 - (vi) Copy of the medical logbook of the Horse;
 - (vii) Results of analyses of food and supplements given to the Horse around the date of the positive test;
 - (viii) Statement of the PR's hay provider together with an invoice for hay purchased some time before the positive test;
 - (ix) Invoice for straw purchased at the Event;
 - (x) Various Decisions of the FEI Tribunal where the persons responsible were ultimately found at No Fault or Negligence for anti-doping rule violations;
- 17.** The PR confirmed that he is a professional rider with sixteen horses in his stables. He submitted that he worked very hard to ensure that his stable was properly run by professionally trained staff.
- 18.** The PR stated that he was well-educated regarding **the EADCMRs** and took his anti-doping responsibilities very seriously.
- 19.** The PR explained that his staff were also very aware of contamination issues and that was the reason why they followed a very strict protocol in his stables to avoid any Adverse Analytical Findings **(AAF's)** arising from contamination.

- 20.** The PR confirmed that after being notified about the AAFs he sent samples of food and supplements that were given to the Horse around the time of the AAF (in total twelve different samples) for analysis. He explained that it was easy to determine which products must be sent for analysis since the Horse was following a strict feeding plan before and during the Event. The PR ensured that samples of all food and supplements that were given to the Horse during the Event were taken in the PR's stable by the FEI Veterinary Delegate under a strict chain of custody and that the feed and oats were collected from the same batch as used the batch used during the Event.
- 21.** The PR confirmed that all the samples were sent for analysis to the Laboratoire des Courses Hippiques in Paris, France (**the LCH Laboratory**), and the results of various analyses showed that all the samples were negative for Morphine, Codeine, Oripavine and Thebaine (another opioid alkaloid where Oripavine is found as a metabolite).
- 22.** On 27 January 2020, the veterinarian in charge of the Horse took new blood and urine samples from the Horse which were sent to the LCH Laboratory for analysis. These reportedly showed no presence of Oripavine, Morphine or Codeine.
- 23.** Expert 1 and Expert 2 confirmed that Morphine, Codeine and Oripavine are opioid alkaloids. Opioid alkaloids are naturally occurring compounds that are produced by different species of poppy plants and can be found in varying concentrations in almost all parts of these plants. While Codeine and Oripavine can be produced by several species like *Papaver orientale* or *Papaver bracteatum*, Morphine is only produced in plants of the species *Papaver somniferum* which is commonly known as opium poppy and to a lesser extent in the subspecies *Papaver somniferum subsp. Setigerum*.
- 24.** The PR submitted that Opioid alkaloids are a class of highly effective substances that are used for a wide range of uses such as the treatment of pain, for anaesthesia, as antitussives and as antidiarrheal drugs. Specifically, Morphine and Codeine can be found in medicinal products approved for the use in humans, whereas no veterinary medicinal product containing these active substances is approved in Germany and the European Union.
- 25.** Therefore, the PR argued that the presence of opioid alkaloids in the urine sample of the Horse can be either explained by the application of a medicinal product containing opioids or by the ingestion of feed contaminated with *Papaver somniferum*. Furthermore, in the current

matter, the opioid alkaloids Morphine, Codeine and Oripavine were detected concurrently in the same urine sample that was taken at the Event. The application of Morphine and/or Codeine would be able to explain the presence of Morphine and/or Codeine in the urine of a horse. Recent scientific studies demonstrate that horses metabolise Codeine into Morphine, Norcodeine, Codeine-glucuronide and Morphine-glucuronide but not Oripavine. Morphine is metabolised in the horse into Morphine-3-glucuronide and Morphine-6-glucuronide. No other metabolite of Morphine has been detected in the Horse. Active substances used in the production of medicinal products are required to have a very high level of purity and can be considered as free from other active substances. Therefore, the PR concluded, that the simultaneous presence of Morphine, Codeine and Oripavine cannot be explained by the application of a medicinal product approved for the use in humans or animals because Oripavine itself is not part of any approved medicinal product.

- 26.** The PR noted that a urinary concentration of 56-84 ng/ml for Morphine, 0.8-1.2 ng/ml for Codeine and 4.8-7.2 ng/ml for Oripavine were detected in the Horse's sample. The detection of these three substances can be explained by the uptake of feed containing the parts of *Papaver somniferum*. He noted that this theory was supported by the concentration ratio of the three opioids with Morphine having the highest concentration and Oripavine and Codeine having much lower concentrations.
- 27.** In relation to the food that was given to the Horse that may have been contaminated with *Papaver somniferum*, the PR explained that the concentrated feeds (oats, mash and pellets) given to the Horse were obtained from certified suppliers of feedstuff who are required to implement so called hazard analysis and critical control point (HACCP) based procedures, which make sure that no unwanted plants or substances enter the feed chain. Therefore, it was unlikely that these products were contaminated with opioid alkaloids.
- 28.** Also, the PR confirmed that samples of various food supplements given to the Horse around the time of positive testing were sent to the LCH Laboratory for analysis and all of them proved negative for opioid alkaloids. In addition, the PR stated that the Horse did not have access to pasture before and during the Event therefore the Horse could not have ingested the poppy seed plant while grazing.
- 29.** Importantly for his case, the PR noted that the hay fed to the Horse before and during the Event was obtained from a hay provider located in Lower Saxony, Germany. As displayed in figures provided by the Expert 2,

Papaver somniferum and its subspecies *Papaver somniferum subsp. setigeurm* are part of the naturally occurring flora in this part of Germany. Therefore, it was possible that the hay may have been contaminated with a small amount of these plants. According to Expert 2 and his knowledge on this species, no hazard analysis and critical control point (HACCP) based procedure existed that would safely prevent and detect this type of contamination. Furthermore, it was impossible to detect such contamination without a specific botanical analysis of the hay and even if possible, an analysis would not be able to examine all of the hay fed to the Horse, as only samples could be investigated. Thus, a low-level contamination of a batch of hay with a single or very few plants cannot be detected with a reasonable level of surety.

- 30.** Furthermore, the PR submitted a statement on behalf of the hay provider dated 16 April 2021 wherein the hay provider stated that he had regularly supplied hay to the PR since June 2019. He confirmed that he had sold hay to the PR in October 2019. He further stated that "*Papaver somniferum is growing in Germany, also in the Lower Saxony region where my farm is located. So, there is a big possibility that it can be found in the hay that is coming from our fields*".
- 31.** The hay provider also submitted a further statement on May 11, 2021, stating that he is a biological farmer and produces hay without using any chemical products or any other additives, but poppy can grow naturally in the fields.
- 32.** The hay provider explained that the hay contained in a single bale can come from several different fields and mixed together when being prepared for delivery. The hay provider did not test his hay for naturally occurring prohibited substances (**NOPS**) such as poppies as he produces over 6000 bales a year from around 30 different fields, and therefore it would be impossible for him to do so.
- 33.** The PR also confirmed that the hay fed to the Horse before and during the Event as well as the sample of hay sent to the LCH Laboratory for analysis came from the same delivery batch but not from the same hay bale. This could explain why the sample of the hay later sent to the LCH Laboratory by the PR did not test positive.
- 34.** In regard to the other possible source of contamination with *Papaver somniferum*, the PR stated that the bedding of the Horse during the Event consisted of straw provided by the Event organiser. Despite the fact that the origin of straw was unknown, it was reasonable to assume that it was

produced in Germany or in neighbouring country where *Papaver somniferum* is also present. A contamination of straw with *Papaver somniferum* can occur in the same way as in hay. Likewise, a prevention or detection of possible contamination would be as difficult as in hay. Therefore, the straw could be considered as another possible source of the opioid alkaloids detected in the present case.

35. In summary, the PR submitted that given all of the elements described above, it was probable that the source of the Prohibited Substances in the Horse's urine was ingestion of the hay contaminated with the naturally occurring poppy seed plant (*Papaver somniferum*) or similar contamination of the straw bought from the Event organiser.

36. Finally, in regard to the level of Fault or Negligence committed by the PR, the PR submitted that he took care of the welfare of the Horse under all possible protocols:

The PR and his staff are very aware of contamination issues and follow strict protocols to avoid this happening, for example, he confirmed that:

- All horse products, such as cream, gel, vitamins or food supplements stored in the barn are carefully labelled;
- All horses have their own individually labelled feed buckets which are carefully washed each day and disinfected twice a week, if they get any medication in the feed, that is given in separate feed buckets, and written on their white board so that all staff are aware;

37. The PR also confirmed that the Horse travelled to the Event in the PR's truck with the Groom and other horses from the stable and the truck was cleaned, washed and disinfected after every show.

38. The PR also noted that the Groom in charge of the Horse at the Event was well educated about the EADCMRs and that she had been personally educated by the PR on these issues.

39. Additionally, the Veterinarian in charge of the Horse confirmed that: a) the Horse was not treated before the Event; b) the last examination of the Horse was on 5 August 2019 and c) the last treatment of the Horse took place on 16 April 2019 (as confirmed by the veterinary statement and the medical logbook of the Horse).

40. The PR noted that Expert 1 specified that a low-level contamination of a batch of hay with a single or very few plants cannot be detected with a reasonable level of safety.
41. In addition, the PR noted that Expert 2 in his statement emphasised that a urinary concentration of Morphine of 56-84 ng/ml in a post competition sample of a horse and the corresponding plasma concentration would be highly unlikely to cause any significant performance altering effect.
42. Consequently, the PR submitted that given he had established on a balance of probability, the source of the positive findings in the Horse's urine as well as taking into account all the elements presented in these proceedings to date in regard to the PR's level of care and duty, the PR stated that there should be No Fault or Negligence for his EADCMR violation.

VI. Written Response of the FEI

43. 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'.
44. The FEI noted that an EAD Rule violation under Article 2.1 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, Morphine and Codeine constituted a violation of Article 2.1 of the EAD Rules.
45. The FEI also pointed out that the PR did not dispute the presence of Oripavine, Morphine and Codeine in the Horse's sample. Accordingly, the FEI submitted that it had discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.

Disqualification of results

46. The FEI also noted that in respect of these proceedings Article 9 of the EAD Rules is applicable 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 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 with 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 EAD Rules.

Presumption of Fault

- 47.** 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, Morphine and Codeine 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).
- 48.** In respect of the 'threshold' requirement and proving how Oripavine, Morphine and Codeine 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 Fault or Negligence that the PR proves how the substance entered into the Horse's system.

³ Art 3.1 EADR

- 49.** The FEI submitted in this context that the PR must provide clear and convincing evidence to prove how Oripavine, Morphine and Codeine entered the Horse's system.
- 50.** The FEI noted the following arguments raised by the PR in the present proceedings and agreed with the following:
- Morphine, Codeine and Oripavine are Prohibited Substances identified as Specified Substances.
 - Whereas Morphine and Codeine are medicinal products and can be acquired through a qualified and licensed professional in many countries, Oripavine, to the best knowledge of the FEI, is not produced in any synthetic form and is not generally available⁴;
 - Therefore, the FEI agreed that the presence of Morphine and Codeine in combination with Oripavine in a Horse's sample strongly indicated a potential ingestion of poppy seed and/or feed contaminated with poppy seed.
 - 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".)
- 51.** Furthermore, the FEI noted that the PR's hay provider confirmed that poppy plants grow in the Lower Saxony region where his farm is located and there is a big possibility that they can be found in the hay that came from his fields. The FEI noted the declarations provided in the statements of the hay provider dated 16 April 2021 and 11 May 2021 as previously outlined in paragraphs 30-32 of this Decision.
- 52.** The FEI also noted that when looking at the map of the occurrence of the poppy seed in Germany, one can immediately see that this plant commonly grows in the region of Lower Saxony⁵. In addition, the FEI acknowledged that the PR went to great lengths, in order to find the source of the

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

⁵ See for example: <https://www.floraweb.de/webkarten/karte.html?taxnr=4116>

Prohibited Substances in his Horse, i.e.; he analysed samples of all feed, minerals and food supplements given to the Horse around the time of the positive test and requested scientific opinions of the Expert 1 and Expert 2 in order to help him to discover and prove the source of the Prohibited Substances in his Horse.

- 53.** The FEI's opinion was that although the analysis of the hay sample sent by the PR to the LCH Laboratory was negative for opioid alkaloids, this did not necessarily prove that the hay ingested by the Horse around the time of AAF was not contaminated with the *Papaverum somniferum*. As explained by the PR, the samples of hay sent for analysis were from the same delivery batch as the hay given to the Horse before and during the Event, but not from the same hay bale. Furthermore, as further clarified by the Expert 2, it is impossible to detect contamination of hay with the *Papaverum somniferum* without a specific botanical analysis of the hay and even such an analysis would not be able to examine all of the hay fed to the Horse, as only samples can be investigated. Thus, a low-level contamination of a batch of hay with a single or very few plants cannot be detected with a reasonable level of safety.
- 54.** Finally, and most importantly, the FEI confirmed that they could not find any veterinary product, human medication or food supplement containing Oripavine that was sold commercially, therefore, it is most likely that Oripavine entered the Horse's body through ingestion of the poppy seed. Similarly, the fact that the Morphine and Codeine was found in the same sample together with Oripavine pointed to the conclusion that Morphine and Codeine were of a vegetable origin and not a synthetic one, especially given the reported concentrations (with Morphine having the highest concentration and Oripavine and Codeine having much lower concentrations). Therefore, the FEI concluded, that the combined presence of Morphine, Codeine and Oripavine cannot be explained by the means of a medicinal product approved for the use in humans or animals because Oripavine itself is not part of any approved medicinal product and it is also not a metabolite of Morphine or Codeine in horses.
- 55.** Accordingly, given all of the particulars presented by the PR (including science regarding Oripavine, Morphine and Codeine; the testimonies delivered by the Hay Provider, the Groom, the Trainer and the veterinary of the Horse, as well as the common occurrence of the poppy seed plant in the Lower Saxony region of Germany, the FEI accepted that the PR established on the balance of probabilities that Oripavine, Morphine and

Codeine entered the Horse's system through the ingestion of hay contaminated with the *Papaverum somniferum*.

Presumption of Fault

- 56.** 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*".
- 57.** Furthermore, the FEI noted that it was necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCM Regulations.

"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."

- 58.** In the present matter the FEI recognised that the Prohibited Substances most probably came from the contaminated hay as extensively laid out by the PR's submissions. Furthermore, the FEI acknowledged that the PR was very much aware of contamination issues and therefore his stables followed a strict protocol to avoid any contamination happening.

- 59.** In particular, the FEI noted that the PR personally educated the Groom about the EADCMRs, which was also confirmed in the Groom's statement.
- 60.** In addition, the FEI also noted that PR used concentrated feeds (oats, mash and pellets) from certified suppliers of feedstuff who are required to implement so called hazard analysis and critical control point (HACCP) based procedures, to make sure that no unwanted plants and substances entered the feed chain.
- 61.** Furthermore, at the events the FEI recognised that the PR regularly fed his horses with the same food and supplements carried by his own van. Additionally, the hay provider from whom the PR bought the contaminated hay was his usual supplier who further confirmed in his statement that to the best of his knowledge he had never informed the PR that (poppy) (*Papaver Somniferum*) could be found in the hay coming from his fields".
- 62.** Given all of the circumstances of the present matter, the FEI accepted that the PR was very much aware of his duties and responsibilities under the EADCMRs and had strict protocols in place in order to avoid potential contamination issues in his stables. The FEI acknowledged that not every contamination case can be avoided and that it accepted the PR had made extensive, and ultimately successful efforts to establish where the contamination in this instance had come from.
- 63.** Consequently, the FEI agreed that the PR had established on the balance of probabilities that he bears No Fault or Negligence for the positive finding for the substances 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. This is consistent with previous FEI Tribunal decisions concerning Prohibited Substances arising from the contaminated feed and/or forage⁶.

Fine and Costs

- 64.** 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

⁶ See for example: [2014/BS03 HEARTBEAT](#), [2014/BS04 KINKA's BOY](#), [2014/BS05 VITNESS 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)

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

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

- 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, Morphine and Codeine 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;
- confirming the suspension of the Horse during the period from 2 December 2019 to 1 February 2020 according to Article 7.4.1 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

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

VII. The Decision

- 67.** 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 7 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 Banned 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 positive findings.
- 68.** 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.
- 69.** 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.
- 70.** 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.
- 71.** 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.
- 72.** As confirmed by previous FEI Tribunal cases, the PR must present facts substantiated with concrete evidence to establish how the Prohibited Substances entered the Horse's system. Speculation or theoretical possibilities are not sufficient. The Tribunal notes that the PR submitted various arguments supported by scientific literature including the statements⁷ provided by the hay provider, of the Horse 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

⁷ Exhibits 10 and 11 (attached to the Response of the FEI)

system i.e., via a source of contaminated feed and/or forage⁸ 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.

- 73.** The Tribunal further agrees with the FEI's recommendation that no fine shall be imposed on the PR and each party shall bear its own costs incurred in connection with the proceedings.

VIII. Disqualification of Results

- 74.** 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

- 75.** 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 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;
 - c. 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;
 - d. confirms the suspension of the Horse during the period from 2 December 2019 to 1 February 2020 according to Article 7.4.1 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

⁸ 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)

- f. orders that each Party shall bear its own legal costs incurred in connection with these proceedings.
- 76.** 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.
- 77.** This Decision shall be notified to the PR and to the NF of the PR and to the FEI.
- 78.** 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 "Martin Gibbs", is centered on the page. The signature is written in a cursive, flowing style.

Mr Martin Gibbs, One-Member Panel