

DECISION of the FEI TRIBUNAL

dated 17 December 2021

(FEI Case Number: HUMAN CASE 2020/HD01 SHEIKH ALI AL THANI)

FEI Tribunal Hearing Panel:

Mr. José A. Rodriguez Alvarez (MEX), one-member panel.

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FEI Tribunal Reference: C21-0032

Athlete/FEI ID/NF: Sheikh Ali AL THANI/10024194/QAT

Event/ID: CSIO4\*-W Designated Olympic Qualifier for Group F - Rabat (MAR)

Date of Event: 10-13 October 2019

Prohibited Substance: Carboxy-THC (Cannabis metabolite)

Sample Collection: 13 October 2019

Sample Code Nos.: 4479560

I. SUMMARY OF THE FACTS:

1. **Claim Brief:** By FEI Legal Department.

2. **Case file:** The Tribunal duly took into consideration all the Parties' written submissions and notes that no hearing was requested in the present matter.

II. SUMMARY OF LEGAL AUTHORITY

1. 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 Page 3 of 24 and 167 ("**GRs**").

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

FEI Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 ("**WADA Prohibited List**").

2. THE RELEVANT LEGAL PROVISIONS:

**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)."

**ADRHA Scope:** "These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events. (...)"

**ADRHA Article 2.1.1:** "It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited

Substance, or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.1"

**ADRHA Article 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

**Article 10.2.1** The period of Ineligibility shall be four years where:

**10.2.1.1** The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the antidoping rule violation was not intentional.

**10.2.1.2** The anti-doping rule violation involves a Specified Substance and the FEI can establish that the anti-doping rule violation was intentional.

**Article 10.2.2** If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

**Article 10.2.3** As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."

**ADRHA Article 10.5:** "Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

**Article 10.5.1** Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6

**10.5.1.1 Specified Substances** Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

**10.5.1.2 Contaminated Products** In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

**ADRHA Article 10.5.2** Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years."

**ADRHA Article 10.10** Financial Consequences

"Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of proportionality, elect to a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or b) fine the Athlete or other Person in an amount up to 15,000 CHF (fifteen thousand Swiss francs). The imposition of a financial sanction or the FEI's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules or the Code. In addition, for any anti-doping rule violation, some or all of sport related financial support or other sport-related benefits received by such Athlete or other Person may be withheld by the FEI and/or its National Federations."

### **ADRHA Article 10.11** Commencement of Ineligibility Period

“Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

#### **ADRHA Article 10.11.1** Delays Not Attributable to the Athlete or other Person

“Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.”

### **III. THE DECISION:**

5. Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions and documentary evidence submitted during these proceedings. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present case, the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

### **IV. FACTUAL AND PROCEDURAL BACKGROUND**

6. Mr Sheikh Ali Al Thani (FEI ID 10024194), the Athlete (**the “Athlete”**), is an International-Level Athlete participating in the discipline of Jumping and registered with the National Equestrian Federation of Qatar (**the “QAT-NF”**).
7. The Fédération Equestre Internationale (“the FEI” together with the Athlete, “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).
8. The ADRHA applicable to these proceedings were adopted by the General Assembly in December 2014 and came into force on 1 January 2015. *“These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's*

*membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events”.*<sup>1</sup>

9. As a member of the QAT-NF, which is a member of the FEI, the Athlete is bound by the FEI's Anti-Doping Rules for Human Athletes (the “ADRHA”; based on the World Anti-Doping Code, the “Code”) which specifies the circumstances and conduct which constitute anti-doping rule violations.
10. Urine samples were taken from the Athlete on 13 October 2019 for testing under the ADRHA. The samples were divided into an A Sample and B Sample and sent to the WADA Accredited Laboratory, the Laboratoire Suisse d'Analyse du Dopage Lausanne, Switzerland (**the “Laboratory”**) for analysis. The Athlete's samples were given reference number 4479560 (collectively, **the “Sample”**).
11. The Laboratory analysed the Athlete's A Sample and reported an Adverse Analytical Finding (**“AAF”**) of Carboxy-THC in the urine sample. Carboxy-THC is a metabolite of Cannabis. Cannabis is listed in class S8 - *Cannabinoids*, and considered a “Specified Substance”, under the 2019 WADA Prohibited List. Cannabis and its metabolite Carboxy-THC are prohibited in competition. The estimated concentration in the sample was 404 ng/mL, which is greater than the Decision Limit of 180 ng/mL.
12. The positive finding of Carboxy-THC in the Athlete's sample therefore gave rise to an Anti-Doping Rule violation under the ADRHA and its presence in an Athlete's sample in competition constituted a violation of Article 2.1 of the ADRHA.
13. Furthermore, the FEI reviewed if the Athlete had an applicable Therapeutic Use Exemption (TUE) granted or to be granted as provided in the International Standard for Therapeutic Use Exemptions in accordance with article 7.2.2 of the ADRHA, and it was subsequently confirmed that no TUE has been granted for the use of the substance Carboxy-THC found in the Sample.
14. Additionally, in accordance with Article 7.1.1 of the ADRHA, in circumstances where the rules of a National Anti-Doping Organisation do not give the National Anti-Doping Organisation authority over an Athlete or other Person who is not a national, resident, license holder, or member of a sport organization of that country, or the National Anti-Doping Organization declines to exercise such authority, results management shall be conducted by the applicable International Federation or by a third party as directed by the rules of the International Federation.

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<sup>1</sup> Introduction of the FEI ADRHA.

Results management and the conduct of hearings for a test conducted by WADA on its own initiative, or an anti-doping rule violation discovered by WADA, will be conducted by the Anti-Doping Organization designated by WADA. Results management and the conduct of hearings for a test conducted by the International Olympic Committee, the International Paralympic Committee, or another Major Event Organization, or an anti-doping rule violation discovered by one of those organizations, shall be referred to the applicable International Federation in relation to Consequences beyond exclusion from the Event, Disqualification of Event results, forfeiture of any medals, points, or prizes from the Event, or recovery of costs applicable to the Anti-Doping Rule violation.

15. Thus, on 6 January 2020, the FEI Legal Department officially notified the Athlete and the QAT-NF of a violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Carboxy-THC in the Athlete's Sample collected out-of-competition and the potential consequences (**the "Notification Letter"**).
16. The Notification Letter included notice of an apparent Anti-Doping Rule violation under Article 2.1 ADRHA, and that the Athlete was not provisionally suspended in accordance with Article 7.9.2 ADRHA, since the substance found in the sample was a Specified Substance. Finally, the Athlete was informed of his right to request for the analysis of the B Sample, The Athlete requested the B sample to be analysed and the result of the B Sample results were notified on 24 January 2020. The B Sample confirmed the analysis results of the A Sample, namely the presence of Carboxy-THC in the Athlete's Sample.
17. By way of background, after notification of the B Sample results on 24 January 2020, the FEI requested an Automatic Disqualification of the Results in accordance with Article 9.1 of the ADRHA (**"the Request"**) and that the Tribunal would issue a Partial Decision on same.
18. In relation to these Proceedings in respect of the Disqualification of Results, a hearing took place via videoconference on 11 February 2020 wherein the Tribunal decided on this Request, i.e., the Disqualification of the Results. The Tribunal was satisfied that the laboratory reports relating to the A Sample and the B Sample reflected that the analytical tests were performed in an acceptable manner, that the findings of the laboratory were accurate and that these were not contested by the Athlete. The Tribunal was also satisfied that the test reports in respect of A Sample and B Sample

taken during in-competition tests on 13 October 2019 evidenced the presence of Carboxy-THC, a metabolite of Cannabis.

19. Accordingly, the Tribunal found that a violation of Article 2.1 of the ADRHA, i.e., the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, was established. Furthermore, the FEI had requested that the Tribunal decide on the Disqualification of the Results and as such the Tribunal concluded that the pre-requisite for the Automatic Disqualification of the Individual Results, i.e., violations of the ADRHA, was established.
20. Taking into consideration the importance of maintaining a level playing field and the substantial prejudice to the other competitors if the results were not corrected at this point in time, the Tribunal found that it was both fair and consistent with previous findings by the Tribunal to disqualify the results at that point in the proceedings (February 2020), in order to allow for the rankings to be corrected accordingly. Furthermore, the Tribunal took note that the Competition determined which teams qualified for the 2020 Tokyo Olympic Games, which in the Tribunal's view is another reason they had to decide on the disqualification of results – at least partially - already at that point in the proceedings.
21. As a result of the foregoing the Tribunal decided in the partial Decision rendered by the Tribunal on 15 February 2020 with regard to the Disqualification of the results of Sheikh Al Thani that: 1) The Individual results of Sheikh Al Thani at the Competition on 13 October 2019 were disqualified in their totality; 2) The Individual results of Sheikh Al Thani would not count for the calculation of any Team results on that day of the Event<sup>2</sup>.
22. Moving forward, the FEI submitted the proceedings with regard to the merits of the case on 26 May 2021 in which they requested for a hearing panel to be appointed by the Tribunal in order to adjudicate on the case. The FEI also submitted its Response with the relevant annexes.
23. On 25 June 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 30 June 2021. The Athlete was also provided with the opportunity to reply to the FEI's correspondence by 15 July 2021. Finally, the Parties were given a deadline until 18 July 2021 to indicate whether they requested for an oral hearing to take place.

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<sup>2</sup> FEI Response- Exhibit 11: Partial Decision of the FEI Tribunal dated 15 February 2020 re C20-0009 and C20-0010, (consolidated case of Al Thani & Bassem)

24. On 25 June 2021, the FEI informed the Tribunal that it did not have any objection to the constitution of the hearing panel. The Athlete did not provide any objection or confirmation to the constitution of the hearing panel thus as explained in opening letter dated 25 June 2021, in the event of a failure to provide an objection to the named panel within the deadline, this would be deemed as agreement to the constitution of the panel.

25. The Athlete never provided any Reply to the FEI's correspondence to the Tribunal within the deadline of 18 July 2021 and to date the Tribunal have received no correspondence from the Athlete, consequently the Tribunal must determine this case using the case file submitted by the FEI on 26 May 2021.

## V. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

*In the following, a summary of the written and oral submissions made by the Parties concerning the merits of the case is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.*

### A. The Legal Submission by the Athlete:

26. The Athlete's submissions on the merits of the case can be summarised as follows:

- a. The Athlete denied that he knowingly smoked, inhaled or otherwise used Cannabis during the Event;
- b. The Athlete was convinced that the only plausible explanation for the AAF of Carboxy-THC and the values detected, was due to an inadvertent exposure to Cannabis during their visits to their hotel's shisha bar in Rabat;
- c. That during the Event, the Athlete stated that he and his fellow athletes visited the shisha bar of their hotel on a daily basis;
- d. The Athlete explained that smoking shisha is very popular in Qatar, like in many Middle Eastern cultures, and is a particularly common activity for professional athletes in order to relax;
- e. The Athlete furthered that while the shisha is also very popular in Morocco, a substance named "kief", i.e., the Moroccan Cannabis, is often used instead of or in combination with the shisha tobacco, unlike in Qatar;

- f. The Athlete maintained that all precautions were taken in order to assure that only shisha tobacco would be used in the shishas smoked by him and his fellow athletes;
- g. The Athlete's expert witness Dr Borrey, confirmed in her report that his exposure to Cannabis most probably occurred unconsciously during their daily visits to the shisha bar of the hotel. She clarified that even though different values of Carboxy-THC were detected in the some of the other Athlete's respective samples, they could have been exposed to a similar dose of Cannabis but have a different genetic profile in their reaction to such a drug. She stated that the values detected probably accumulated over the course of several days, through several visits to the shisha bar;
- h. The Athlete firmly stated that he never used Cannabis, neither in or out of competition and that using a substance such as Cannabis, would not even enhance the performance, at such an important event, it would have been simply stupid to use this substance;
- i. Therefore, the Athlete considered it is very improbable that he and his fellow athletes would knowingly put themselves and the Team in such a situation. The Athlete has never before tested positive for any prohibited substance;
- j. The Athlete, therefore, concluded that "keif" was deliberately added to his shisha, without his knowledge, in order to influence their performance in the competition and/or cause the Team's elimination in the Event and therefore, in the 2020 Olympics;
- k. The Athlete also noted that the Team's most important competitor in the Event was Morocco, the host nation. In the ranking of the Event, Morocco finished third, right behind Qatar, and did not receive a ticket for the 2020 Olympics. But, if his Team were eliminated, Morocco would have taken their place at the Olympics;
- l. Consequently, the Athlete deemed the stakes were high enough for the Morocco Team to consider a potential elimination of the Qatar Team during the Event. Such a situation would provide them with a clear advantage for Olympic entry and thus, the Athlete was convinced that was the reason why their shishas were tampered with;
- m. The Athlete concluded that in order to find out who tampered with the shishas smoked by the Athlete and his fellow athletes, and whether this person or group of persons was connected to or acting on the instruction of the Moroccan team

and how they did it, the Athlete's Team have hired a Moroccan lawyer to file a criminal complaint with the Moroccan authorities for further investigation.

#### B. Written Response of the FEI:

27. The FEI submitted that it is the FEI's burden to establish all the elements of the ADRHA violation charged, to the comfortable satisfaction of the Tribunal. *In casu*, the analysis of the A Sample confirmed the presence of Carboxy-THC, which in itself constituted sufficient proof that a violation of Article 2.1 of the ADRHA occurred. In addition, the B Sample also confirmed the presence of Carboxy-THC. In any event, the presence of Carboxy-THC in his Sample is not disputed by the Athlete.

#### Imposition of a period of Ineligibility

##### a) The presumption of intentional administration in order to enhance performance

28. In respect of the presumption of intentional administration to enhance performance, the FEI submitted that where a Prohibited Substance is found in an Athlete's Sample, a clear and unequivocal presumption arises under the ADRHA that it was used or administered deliberately, in an illicit attempt to enhance his or her performance. This mirrors the World Anti-Doping Code, under which exactly the same presumption applies. See, e.g., Eder v Ski Austria<sup>3</sup>, "*Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-doping rule violations do not 'just happen' but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him- or herself*"; WADA v NSAM et al<sup>4</sup>, where no mitigation of the standard two-year ban was permitted "*since the Athletes did not rebut the presumption that they [had] ingested the prohibited substance to enhance their performance*".

29. As a result of this presumption of fault, the FEI referred to Article 10.2 of the ADRHA which provides that:

*"10.2.1 The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

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<sup>3</sup> CAS 2006/A/1102, award dated 13 November 2006 at para 52

<sup>4</sup> CAS 2007/A/1395, award dated 31 March 2008 at para 88

*10.2.1.2 The anti-doping rule violation involves a Specified Substance, and the FEI can establish that the anti-doping rule violation was intentional.*

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years."*

30. Hence, the FEI explained that an Athlete with no previous doping offences who violates Article 2.1 of the ADRHA with a Specified Substance is subject to a period of Ineligibility of two years, unless the FEI can establish that the anti-doping rule violation was intentional.

31. Furthermore, the FEI stated that an Athlete can reduce the standard two years period of ineligibility for a Specified Substance by establishing to the satisfaction of the FEI Tribunal (it being his/her burden of proof, on the balance of probability<sup>5</sup>):

- i. How the Prohibited Substances (here, Carboxy-THC) entered into his/her system; and
- ii. That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method (in which case, the period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ADRHA); or
- iii. That he/she bears No Significant Fault or Negligence for that occurrence in the totality of the circumstances, (in which case, the presumptive period of ineligibility may be reduced by up to 50%, depending on his/her degree of fault, pursuant to Article 10.5.2 of the ADRHA).

32. However, the FEI submitted that if the Athlete failed to discharge the burden as to how the substance entered his system i.e., the presumption of intentional use or administration to enhance performance stands, the presumptive two-year ban for Specified Substances under Article 10.2 applies.

- b) **The 'threshold' requirement: proving how the Carboxy-THC entered into the Athlete's system**

33. In respect of the ADRHA stipulations, the jurisprudence of the FEI Tribunal and the CAS are very clear according to the FEI, i.e., that it is a strict threshold requirement of

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<sup>5</sup> Art 3.1 ADRHA.

any plea of No (or No Significant) Fault or Negligence that the Athlete proves how the substance entered into his/her system.

34. The FEI noted that this requirement must be strictly applied because without such proof it would be impossible to assess the Athlete's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Athlete's sample. Moreover, the FEI submitted in this context that the Athlete must provide clear and convincing evidence which proved how the Carboxy-THC entered his system. The FEI was of the opinion that the Athlete would need to provide an explanation that was plausible on a balance of probabilities and clearly established a link between the AAF and his explanations.
35. In this case, the Athlete presented a scenario of sabotage by another team at the shisha bar at the hotel. However, the Athlete did not provide any evidence for such assertions, and therefore such scenario was deemed as mere speculation by the FEI. Notwithstanding the further requests for more information and explanations from the FEI in respect of these allegations of sabotage, the FEI confirmed that the Athlete was silent over the past year and did not respond to any of the communications from the FEI. Therefore, the FEI was of the opinion that the Athlete had not established how the Prohibited Substances Carboxy-THC entered his system on a balance of probabilities and this threshold requirement was not fulfilled.

**c) Fault/Negligence for the rule violation**

36. The FEI submitted that even though the Athlete had not established the source of the Carboxy-THC, the FEI wished to provide a short submission on the fault and negligence for the rule violation.
37. The FEI noted that in terms of the degree of Fault and Negligence by the Athlete for the rule violation, the starting point of any evaluation is the *"personal duty"* of the Athlete following from Article 2.1.1 of the ADRHA, i.e., his personal duty to ensure that *"no prohibited substance is present in his or her body"*, and *"Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples"*. Additionally, the FEI noted it was necessary to refer to the definitions of *Fault*, as defined in Appendix 1 of the ADRHA.

*"Fault: 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 Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the*

*Athlete's or other Person's departure from the expected standard of behaviour".*  
(Emphasis added)

*"No Fault or Negligence: The Athlete or other Person's 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 Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."*

*"No Significant Fault or Negligence: The Athlete or other Person 's establishing that his or her 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 anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."*

38. The FEI highlighted that Prohibited Substances classified as Specified Substances, like Cannabis, are prohibited in competition. It is therefore the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the Athlete had to establish 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 used, or his body contained, a Prohibited Substance.
39. The FEI notes that these proceedings concern Cannabis and the Athlete maintained that he never knowingly consumed Cannabis neither in nor out of competition. He claimed that using a substance that did not even enhance the performance<sup>6</sup>, such as Cannabis, would be pointless. However, at the same time he explained that during the Event, he and his fellow athletes visited the shisha bar of their hotel on a daily basis, as such, he was convinced that the only plausible explanation for the positive testing of Carboxy-THC and the values detected, was the result of in advertent exposure to Cannabis during their visits to their hotel's shisha bar. He furthered that smoking shisha is very popular in Qatar, like in many Middle Eastern cultures, and is particularly common for professional athletes in order to relax, in particular he clarified that while the shisha is also very popular in Morocco, a substance named "kief", i.e., Moroccan Cannabis, is often used instead of shisha or with the shisha tobacco, unlike in Qatar.

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<sup>6</sup> The FEI did not agree to that there are no performance enhancing effects in the prohibited substance.

40. Despite the assertions of innocent exposure to Cannabis by the Athlete, the FEI considered that even if passive smoking shisha at the hotel bar provided a plausible explanation for the AAF of Carboxy-THC, the Athlete had unfortunately not submitted any substantiated evidence for such a scenario. Consequently, the FEI saw no causal link between the circumstances of the case and the reason for the AAF, and considered the explanation provided by the Athlete as mere speculation.
41. The FEI stated that as a prerequisite for any reduction or elimination based on fault and negligence, in accordance with Article 10.4 and 10.5 of the ADRHA, it is essential to be able to prove on a balance of probabilities how the prohibited substance entered the Athlete's system. Accordingly, the FEI considered that the Athlete failed this threshold requirement and consequently, no reduction of the standard two (2) years ineligibility period for Specified Substances can be applied in the case. Nonetheless, the FEI highlighted that should the Tribunal differ in their opinion and consider that the Athlete established the source of the AAF, the FEI also wishes to submit additional points on the fault and negligence for the rule violation should a different viewpoint prevail.
42. In addition, the FEI understood that the Athlete was aware that "kief" is Cannabis and this is used instead of shisha tobacco in Morocco. The FEI is of the opinion that the Athlete could have perceived the risk of his actions of going to the shisha bar and smoking shisha during an Event. Notwithstanding taking such a risk by attending a shisha bar, through his actions, the Athlete demonstrated he did not exercise utmost caution in his duty of care. On the contrary, the FEI believed that he further exposed himself to a risk that he was already aware of, which potentially could result in an AAF. In the FEI's opinion therefore, the Athlete was at fault for this rule violation, since he did not exercise due caution and ensure that the necessary steps were taken to prevent any prohibited substances being ingested.
43. Taking into account the particulars noted above, the FEI confirmed that the Athlete failed to establish both how the prohibited substance entered his system, and that he bore no (significant) fault or negligence for the rule violation. Finally, the FEI concluded that without any further evidence in the case, which served to provide a causal link on how the prohibited substance Carboxy-THC entered the Athlete's system, the FEI submitted that no reduction based on Article 10.4 or 10.5 ADRHA of the standard ineligibility period for Specified Substance existed, and the period of ineligibility to be imposed on the Athlete shall be two (2) years in accordance with Article 10.2 of the ADRHA.

c) **Aggravating circumstances/ Other violations**

44. In addition, the FEI highlighted that the Athlete tried to avoid the sample collection. The FEI confirmed they did not charge the Athlete with a violation of Article 2.3 of the ADRHA, since ultimately he provided a clear sample. However, for the sake for the completeness of this case the FEI submitted the supplementary report of the incident<sup>7</sup>. The FEI furthered that in any event, this incident could be considered as an aggravating factor in relation to the fault and negligence evaluation of the Athlete, in the event that the Tribunal determines that the Athlete established the source of the AAF and evaluation of fault/negligence of the Athlete is required.

**d) Disqualification of results**

45. In respect of the Disqualification of Results, the FEI referred to Article 9.1 of the ADRHA wherein it states that *“An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes”*.

46. In addition, Article 10.1 of the ADRHA provides that, *“An anti-doping rule violation occurring during or in connection with an Event may, upon decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.”* Furthermore, the FEI noted that factors to be included in assessing whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions, and for the case of team competitions, Article 11 ADRHA will also be applied.

47. In relation to the Partial Decision dated 15 February 2020<sup>8</sup> rendered by the Tribunal in respect of this case, the FEI noted that the Tribunal disqualified the following results in accordance with Art 9.1 ADRHA:

*“The Individual results of Sh. Al Thani at the Competition on 13 October 2019 shall be disqualified in its totality. The Individual results of Sh. Al Thani shall not count for the calculation of any Team results on the same day”*.

48. As such, the FEI requested that all the remaining results of the Athlete from this Event, i.e., between 10-13 October 2019, shall therefore be disqualified in this decision, with

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<sup>7</sup> Exhibit 13- FEI Response, Supplementary Report form dated 13 October 2019.

<sup>8</sup> Partial Decision of the FEI Tribunal dated 15 February 2020 re C20-0009 and C20-0010, (consolidated case of Al Thani & Bassem)

all resulting Consequences, including forfeiture of any medals, points and prizes, in accordance with Article 10.1 of the ADRHA.

**e) Fine and Costs**

49. In respect of the issue of fines and costs the FEI referred to Article 10.10 of the ADRHA which provides that *“Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of proportionality, elect to a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or b) fine the Athlete or other Person in an amount up to 15,000 CHF”*.

50. Further to the latter provisions, the FEI submitted that for violation of Article 2.1 and/or Article 2.2 of the ADRHA, it was proportionate to impose a fine and legal cost, and in this regard they requested that a fine be imposed on the Athlete, and that the Athlete be ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI also noted that certain parts of the fine if granted would contribute to education within the anti-doping program.

**f) Conclusion**

51. In summary and taking into account the particulars outlined at paragraphs 27 to 50 of the written response of the FEI, the FEI respectfully requested that the FEI Tribunal issue a decision:

- i. upholding the charge that the Athlete has violated Article 2.1 of the ADRHA;
- ii. disqualifying the remaining results of the Athlete and Horse combination obtained at the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 10.1 of the ADRHA;
- iii. imposing a period of Ineligibility two (2) years on the Athlete, commencing from the date of this Decision;
- iv. fining the Athlete, a fine of 7 500 CHF; and
- v. ordering the Athlete to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

**VI. JURISDICTION**

52. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ADRHA, as well as Article 18 of the IRs. The Athlete is a member of the QAT-NF, and as such is bound by the ADRHA. The jurisdiction of the

Tribunal is undisputed.

## VII. LEGAL DISCUSSION

*Source of the Prohibited Substance – the exposure to the prohibited substance was as a result of criminal sabotage by another team.*

53. The Tribunal considers the suggestion that the source of the Athlete's AAF was the result of unknowing exposure to cannabis during his residence in Rabat through sabotage merely speculative and notes that no corroborating evidence was ever presented during these proceedings notwithstanding the alleged efforts by the Athlete to attain such evidence from the hotel at Rabat, Morocco.
54. The Tribunal further notes that upon weighing the proofs and evidence remitted by the Appellant and taking into account the arguments as detailed at paragraph 26 of this Decision, that a modus operandi existed by a person or group of persons connected to (or acting on the instruction of) the Moroccan team to commit illegal sabotage in the form of tampering with the shisha tobacco, such conclusions cannot be formed.
55. As confirmed by various CAS panels as well as FEI Tribunals, the Athlete has to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the Athlete. The Athlete's scenario has to reach a 51% threshold for it to be successful<sup>9</sup>. In this case, the Athlete only suggested a scenario of sabotage by another team at the hotel's shisha bar. In addition, upon further requests for more information and explanations of the case, the Athlete provided limited explanations to substantiate the allegations. As a result, the Tribunal considers that the Athlete's submission did not reach the threshold requirement on a balance of probabilities, and furthermore that the scenario of sabotage suggested would require extensive explanations, investigations and corroborating evidence to reach any consideration of such threshold by the Tribunal.
56. Consequently, the Tribunal accepts that without any further evidence, apart from hypothetical allegations, no causal link can be established that the prohibited substance Carboxy-THC entered the Athlete's system through criminal sabotage by another team. Accordingly, a reasonable explanation has not been provided and as

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<sup>9</sup> See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

such the Tribunal confirms that under these circumstances, the Athlete has failed to establish how the prohibited substance entered his system.

57. Consequently, and as already noted at paragraph 28 of this Decision, where a Prohibited Substance is returned in an Athlete's sample, a clear and unequivocal presumption arises under the ADRHA that it was used or administered deliberately, in an illicit attempt to enhance his or her performance. As referenced by the FEI this mirrors the World Anti-Doping Code, under which exactly the same presumption applies, e.g., Eder v Ski Austria<sup>10</sup>, *"Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-doping rule violations do not 'just happen' but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him- or herself"*.
58. In this sense, the Tribunal notes that the Athlete was aware that "kief" is cannabis and that it was usually utilised instead of shisha tobacco in Morocco, yet they still frequented the shisha bar regularly with their team members during an Event. This, in itself cannot be held in line with the duty of care by exposing themselves to the potential risk of ingestion of a prohibited substance. The Tribunal considers that utmost caution was not exercised by the Athlete to avoid the ingestion of any prohibited substances.

#### ***Reduction or Elimination of the Period of Ineligibility***

59. Bearing in mind the reasoning above and upon consideration of art. 10.2.2 of the ADRHA, a two-year period of ineligibility should be imposed unless the Athlete has satisfied the Tribunal that the period can be reduced. In this regard the Tribunal only deems Article 10.11.1 of the ADRHA applicable, in respect of *"Delays Not Attributable to the Athlete or other Person"* and notes that; *"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified"*.
60. Additionally, the Tribunal takes in account Article 4.2 of the ISRM and the principle of "Timeliness", wherein "In the interest of fair and effective sport justice, anti-doping rule violations should be prosecuted in a timely manner. Irrespective of the type of anti-doping rule violation involved, and save for cases involving complex issues or

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<sup>10</sup> CAS 2006/A/1102, award dated 13 November 2006 at para 52

delays not in the control of the Anti-Doping Organization (e.g. delays attributable to the Athlete or other Person), Anti-Doping Organizations should be able to conclude Results Management (including the Hearing Process at first instance) within six (6) months from the notification..." and 8.8 c) of the ISRM which states that "the Hearing Process shall be conducted within a reasonable time[...]save in complex matters, this timeframe should not exceed two (2) months".

61. In line with which, the Tribunal recognises the slow advancement of these proceedings. The samples were collected on 13 October 2019, results were informed on 6 January 2020, the FEI issued the official notification of charge under the ADRHA<sup>11</sup> to the Appellant on 6 January 2020 and requested the intervention of the FEI Tribunal for a partial decision on 29 January 2020. Said decision was passed on 15 February 2020. From that moment on and until the formal passing of the case file to the FEI Tribunal more than 14 months passed with no clear explanation provided as to such delay. Such tardiness cannot be simply omitted. Moreover, it is to be noted that a Decision on partial disqualification was already passed against Sh. Al Thani in the terms described above.

62. In view of the above, the Tribunal holds that Article 10.11.1 of the ADRHA should be applied and as such the period of ineligibility is to be started at an earlier date. Accordingly, the Tribunal imposes a period of Ineligibility at an earlier date in order to reduce the sanction on ineligibility. Furthermore, due to the failure of the FEI to ensure that timeliness was at the forefront of the result managements process in this particular case, the Tribunal refers to previous caselaw of the Tribunal and relies on the recent Decisions of C21-0014- AL DHAHWI W'RSAN<sup>12</sup>, C21-0027- GUADALUPE D'IBERICA<sup>13</sup>, C21-0015- FELINE X<sup>14</sup> and decides to backdate the start of the ineligibility period 6 months prior to the notification of the present Decision. Thus, in terms of ineligibility for the purposes of this present case the Tribunal imposes the period of Ineligibility of 2 years to start on 17 June 2021.

63. The Tribunal notes that all competitive results achieved during the period of ineligibility should be Disqualified and also notes that no Athlete who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorised anti-doping education or

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<sup>11</sup> FEI Anti-Doping Rules for Human Athletes, based upon the 2015 WADA Code, effective 1 January 2015.

<sup>12</sup> DECISION of the FEI TRIBUNAL dated 24 August 2021 in the matter of Mr Hamad Fahad Abdalla Ibrahim ALOBEIDLI (FEI Case number: FEI 2019/BS49 – AL DHAHWI W'RSAN) and Mr Ahmed Salem Ali Bakheet AL RASHDI (FEI Case number: FEI 2019/BS49 – AL DHAHWI W'RSAN)

<sup>13</sup> DECISION of the FEI TRIBUNAL dated 22 September 2021 in the matter of Mr Abdul-Aziz A. AL-SABRI (FEI Case number: FEI 2019/CM20 – GUADALUPE D'IBERICA)

<sup>14</sup> DECISION of the FEI TRIBUNAL dated 22 September 2021 in the matter of Mr Abdul-Aziz A. AL-SABRI (FEI Case number: FEI 2019/CM20 – GUADALUPE D'IBERICA)

rehabilitation programs) authorised or organised by the FEI or any National Federation or a club or other member organisation of the FEI or any National Federation, or in Competitions authorised or organised by any professional league or any international or national level Event organisation or any elite or national level sporting activity founded by the governmental agency (Article 10.12.1 of the ADRHA).

64. Furthermore, pursuant to Article 10.10 of the ADRHA, where an Athlete commits an Anti-Doping Rule violation, the Tribunal may, in its discretion and subject to the principle of proportionality, fine the Athlete in an amount up to CHF 15,000. In the present case, it was the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. Moreover, considering the degree of the Athlete's fault, in terms of the lack of a reasonable duty of care taken appropriate to a particular situation and at the very least that the Athlete engaged in conduct which he knew carried a significant risk i.e., frequent attendance at a shisha bar where Moroccan Cannabis may be used instead of tobacco, which is significant, , the Tribunal rules that a fine of CHF 7,500 is appropriate. In addition, since no oral hearing was requested, the Tribunal decides that no costs against the Athlete should be imposed.

#### *Disqualification*

65. Since the ADRHA have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies - in accordance with Articles 9 and 10.1 of the ADRHA - all of the Athlete's individual results at the Event CSIO4\*-W Designated Olympic Qualifier for Group F - Rabat (MAR) on 10-13 October 2019, with all Consequences (and - where applicable - the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prize money.

### VIII. DECISION

- 1) The Tribunal rules that the FEI has established an Anti-Doping Rule violation to the comfortable satisfaction of the Tribunal and notes that the results of the A and B Samples taken from the Athlete at the Event confirming the presence of Carboxy-THC constitutes sufficient proof of the violation of Article 2.1 of the ADRHA. Accordingly, the Tribunal upholds the charge that the Athlete violated Article 2.1 of the ADRHA.
- 2) The Athlete shall incur:
  - a) a period of Ineligibility of two (2) years. The period of the Ineligibility will be effective from 17 June 2021, therefore, the Athlete will be ineligible until 16

June 2023;

- b) A fine in the amount of **seven thousand five hundred Swiss Francs (7,500 CHF)**; and
- 3) This Decision is subject to appeal in accordance with Article 13.2 of the ADRHA 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.
- 4) This Decision shall be published in accordance with Article 14.3 of the ADRHA Rules.

**DECISION TO BE FORWARDED TO:**

- a. The Parties: Yes
- b. The NF of the Athlete: Yes
- c. Any other: Yes
  - WADA
  - QAT NADO

FOR THE TRIBUNAL



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Mr José A. Rodríguez Álvarez , One-Member Panel