

**DECISION of the FEI TRIBUNAL**

**Dated 4 January 2021**

**(FEI Case number: FEI 2019/CM12-CALANDRIA NOE)**

**FEI Tribunal Hearing Panel:**

**Ms. Diane Pitts**

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**FEI Tribunal Reference:** C20-0057

**Horse/Passport:** CALANDRIA NOE/104YX20/UAE

**Person Responsible/ID/NF:** Mr. Facundo Leites/10055292

**Trainer/ID/NF:** Mr Ali Nasser Sultan AL YABHOUNI/1007251

**Event/ID:** CEI1\* 80 – Bou Thib (UAE) 2019

**Date of Event:** 16/02/2019

**Prohibited Substances:** Flumetasone

**Bar Code Nos.:** 5578622

## **I. Factual background**

- 1.** Facundo Leites (FEI ID 10055292), the Person Responsible (the "**PR**"), is an Endurance Rider for Uruguay.
- 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, CALANDRIA NOE (the "**Horse**") at the event CEI1\* 80 – Bou Thib (UAE) on 16 February 2019 (the "**Event**").
- 4.** The Horse's registered trainer in the FEI database at the time of the Event was Mr. Ali Nasser Sultan AL YABHOUNI (FEI ID 1007251)
- 5.** Blood and urine samples were collected from the Horse on 16 February 2019 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory (the "**Laboratory**") in Sha Tin, Hong Kong, China, for analysis. The Horse's samples were divided into an "A sample" and "B sample".
- 6.** The Laboratory analysis of the A sample reported adverse analytical findings for Flumetasone which is a "**Controlled Medication Substance**" under the FEI's Equine Anti-Doping and Controlled Medications Regulations (the "**EADCMR**") and the FEI Prohibited Substances List.

## **II. Initial Proceedings**

- 7.** On the 18 March 2019, the FEI Legal Department officially notified the PR through the National Federation of Uruguay ("**URU-NF**") in addition to the UAE National Federation ("**UAE-NF**") (due to the Horse being registered with the UAE-NF) of the presence of a Prohibited Substance in the A sample, the rule violation, and the potential consequences (the "**Notification Letter**"). The Notification Letter included notice that the PR was not provisionally suspended since there was the presence of only one Controlled Medication Substance in the Horse's sample.
- 8.** The PR was also informed in the Notification Letter of his right to request an analysis of the B sample, which he did not do. He also did not challenge the results of the A sample.

### **III. Further Proceedings**

- 9.** By email dated 11 November 2020, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel.
- 10.** On 20 November 2020, the FEI 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 25 November 2020. The PR was also granted the opportunity to respond to the FEI's allegations that a Prohibited Substance was present in the horse's system by providing a statement of defence and any supporting evidence by 1 December 2020. The PR was informed that should he fail to comply with this deadline, the hearing panel would decide this case based on the file in its possession. Finally, the Parties were informed that they had the right to request an oral hearing.
- 11.** On 23 November 2020, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
- 12.** On 21 November 2020, the URU-NF confirmed via email that the PR had been informed of the Opening and Nomination Letter containing all the information particular of the Tribunal's proceedings listed at paragraph 10. There was no communication from the PR himself. Therefore, by not responding within the deadline, it was deemed that he agreed to the constitution of the hearing panel.
- 13.** Neither Party requested an oral hearing.

### **IV. Considering**

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

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

General Regulations, 24<sup>th</sup> edition, January 1, 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 2<sup>nd</sup> edition, changes effective January 1, 2020. The EADCM Regulations are comprised of the equine anti-doping rules (the "**EAD Rules**") in the first half and the equine controlled medication rules (the "**ECM Rules**") in the second half.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective January 1, 2020.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective January 1, 2020, Arts. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**B. Person Responsible:** Mr. Facundo Leites

**C. 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."

**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 Parties' Submissions**

### **A. The Submissions of the PR**

**14.** On 19 April 2019, the PR submitted a short statement to the FEI explaining *"that that the mare Calandria Noe was receiving Flumetazone to treat LF [left front] fetlock joint chronic arthrosis. The stable vet injected the mare 8 days before the race with 1.5 mg of flumetazone. The problem raise that the race was changed on the date and was transfer to an early date. It was no aim of cheating and or interfering with the horse performance. The mistake was not to update the race calendar..."*.

**15.** In addition to the statement of the PR, on the 7 January 2020 the Trainer of the Horse submitted the following statement to the FEI, *"Even I am the register trainer of the horses in our stable whish one of the respectful stables in the country applying the rules and giving chance to many riders from UAE and else countries to ride our horses.*

*What happened with the mention case, after I return I conducted a full investigation, I found out it was sure our horse received the mention substance but it was miss communication between stable staff and recording the treatment and the entry made for the ride.*

*I would again apologize for that and assure you there in future will take all measures To avoid such case..."*

**16.** No further submissions were received by the FEI.

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

**17.** On 11 November 2020, the FEI provided its response in this case.

**18.** The FEI submitted the following about the science of the positive findings for the Prohibited Substance as follows:

a. Flumetasone is a corticosteroid used in the treatment of immune mediated

diseases and skin diseases. The substance is classified as a Controlled Medication Substance under the FEI Equine Prohibited Substances List.

- b. The positive finding of Flumetasone in the Horse's sample gives rise to a Controlled Medication Rule Violation.

**19.** The FEI stated the following about the violations of the EADCM Regulations:

- a. Article 2.1 of the ECM Rules prohibits *"The presence of a Controlled Medication Substance or its Metabolites or Markers in a Horse's Sample"*.
- b. Article 2.1.1 of the ECM Rules states that: *"It is each Person Responsible's personal duty to ensure 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 [...]."*

**20.** The FEI submitted that:

- a. Pursuant to Article 3.1 of the ECM Rules, it is the FEI's burden to establish all the elements of the ECM Rule violation, to the comfortable satisfaction of the FEI Tribunal.
- b. The elements of an Article 2.1 violation are straightforward: *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated to establish an ECM Rule violation under Article 2.1."* Instead, it is a *"strict liability"* offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample. The results of the A sample analysis confirmed the presence of Flumetasone (the prohibited Substance) and constituted sufficient proof of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence of the Prohibited Substance in the A sample. Therefore, the FEI submitted that it discharged its burden of establishing that the PR violated Article 2.1 of the ECM Rules.
- c. When a Prohibited Substance is found in a horse's sample, there is a clear and unequivocal presumption of fault under the ECM Rules. All Controlled Medication treatments must be given in the best health and welfare interests of the Horse, and not for any other reasons. Article 10.2 therefore provides that a Person Responsible with no previous doping offences who violates Article 2.1 of the ECM Rules, is subject to a period of *"Ineligibility"* of six months, unless he/she can rebut the presumption of fault.

- d. To rebut the presumption of fault, the ECM Rules stipulate, that he/she must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability<sup>1</sup>):
- i. How the Prohibited Substances (here, Flumetasone) entered into the horse's 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 administered to the horse (or the horse's system otherwise contained) a Controlled Medication Substance (in which case, the presumptive six-months period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ECM Rules); or
  - iii. That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive six-month period of ineligibility may be reduced depending on his degree of fault, pursuant to Article 10.5 of the ECM Rules).
- e. If the PR fails to discharge this burden, the presumptive six-month ban under Article 10.2 applies.
- f. However, if the PR has prior Rule Violations Article 10.8 of the ECM Rule ("*Multiple Violations*"), this has to be taken additionally into consideration when determining the final Period of Ineligibility.
- g. In relation to the 'threshold' requirement i.e., proving how the Flumetasone entered into the Horse's system, the ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and the CAS are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. This requirement must be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Controlled Medication Substances in the Horse.
- h. In order to fulfil the latter 'threshold' requirement, the PR must provide clear and convincing evidence that proves how the Flumetasone entered the Horse's sample. In this regard, the PR

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<sup>1</sup> Art. 3.1 ECMR

explained that the Horse was receiving Flumetasone to treat left front fetlock joint due to chronic arthrosis and that the stable veterinarian injected the Horse 8 days before the "race" with 1,5 mg of Flumethasone. The PR added that the problem arose when the "race" was rescheduled on an earlier date and there was no ambition to cheat or interfere with the Horse's performance.

- i. The FEI also submitted a statement from the Trainer who alleged that after a full investigation, a miscommunication between the stable staff was discovered with regards to the recording of the treatment and an entry for a competition.
- j. The FEI argued that the PR's and the Trainer's explanations lack decisive information and are unsubstantiated. The FEI stated that in order to evaluate the plausibility of the explanation submitted by the PR, additional information and documents on the treatment and clear explanation of the alleged miscommunication would be required. It is not clear from the submitted statements of the PR and the Trainer whether the Horse received Flumetasone multiple times or only a one-off dose 8 days before the Competition.
- k. The FEI also noted that the PR did not provide the exact date of such administration and no other documents that would attest such administration for example the veterinary records of the Horse or a statement from the veterinarian that injected the horse etc. In addition, the miscommunication that allegedly occurred amongst the staff and that has led to this Adverse Analytical Finding has not been clearly explained.
- l. Due to the above reasons the FEI is not satisfied that the PR met his burden of proving, on the balance of probability, how the Prohibited Substances entered into the horse's system. The FEI therefore submitted that the PR had not established how Flumetasone entered the Horse's system.
- m. In relation to the PR's degree of fault, the definitions of fault and the factors to be taken into consideration were examined by the FEI:

\*\*\* Quote\*\*\*

*"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Person Responsible degree of Fault include, for example,*



*the Person Responsible's and/or member of the Support Personnel's experience,... 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 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).<sup>2</sup>*

*"No Fault or Negligence". 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 or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule.*

\*\*\*End Quote\*\*\*

- n. The FEI submitted that in terms of the level of Fault and Negligence by the PR for the rule violation, the starting point of any evaluation is the "personal duty" of the PR following from Article 2.1.1 of the ECM Rules, i.e., his personal duty to ensure that "no Controlled Medication Substance is present in the Horse's body". The FEI argued that via their Clean Sport programme and in particular the "Athlete's Guide"<sup>3</sup> they have gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. The Athlete's Guide gives the following information to Athletes:

\*\*\* Quote\*\*\*

*"What are my Responsibilities?"*

*As an Athlete, you have a responsibility to know, understand, and follow the EADCM regulations. But you do not have to be a legal expert to have this basic understanding. If you are the rider, driver, or vaulter of the horse, then you are the Person Responsible for the horse that will be held accountable for an EADCM regulation violation. This is true even if you are riding, driving, or vaulting a borrowed horse! Therefore, you need to be very careful about who you trust to*

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<sup>2</sup> Appendix 1 EADR

<sup>3</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

*care for your horses and even more so who you trust to treat your horses. In the case of a borrowed horse, you should make sure you are comfortable with the horse's treating history before competing with it. In the regulations, if a member of your support personnel does something that leads to an EADCM regulation violation, that person may be held accountable, but so will you. For example, if you rely on your veterinarian who tells you that a substance can be used on your horse without violating any rules, and later you find out that your horse has tested positive for a Prohibited Substance, you will be in violation of the rules even though you were relying on your veterinarian. Similarly, if a groom who is working for you mistakenly gives one of your competition horses medication intended for an ill horse and the competition horse later tests positive, you will be in violation of the regulations (and your groom may be also.)"*

\*\*\*End Quote\*\*\*

- o. The FEI also referred to the Glenmorgan decision<sup>4</sup> of CAS in this context where it was deemed that the Athlete's Guide 'contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form' describing the Athlete's Guide as "required reading". The Panel also confirmed that the rider is best fit to control the Horse before a competition. *".. Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*
- p. Furthermore, the FEI referred also to the case of Mohammed Shafi Al Rumaithi v. FEI<sup>5</sup> wherein the Sole Arbitrator endorsed the rationale behind the FEI's policy of making the Athlete/Rider the Person Responsible, stating:

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent [the FEI] put it in its skeleton argument*

*"The FEI believes that making the rider responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play.*

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<sup>4</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

<sup>5</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI (para 57)

*It (is) strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse’.*

*The Sole Arbitrator respectfully agrees”.*

- q. In light of the above-cited CAS jurisprudence on the responsibility of the rider, the FEI submitted that by making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bears No (Significant) Fault or Negligence for the horse’s positive test results is a reasonable and justifiable stance. Furthermore, as the CAS jurisprudence confirms, the rider is ultimately the Person Responsible for the horse he is competing with and cannot delegate that duty to another person. He therefore has an obligation to ensure that no Prohibited Substance enters into the horse’s system and must act with utmost caution in order to fulfil this duty.
- r. Accordingly, the FEI confirmed that in the case before us, the PR has not discharged his burden of proving how Flumetasone entered the Horse’s system. Consequently, no elimination or reduction of the standard period of Ineligibility of six (6) months is possible under Article 10.4 or Article 10.5 of the ECMRs.
- s. Additionally, the FEI highlighted the provisions of Article 10.8 Multiple Violations of the ECMRs, since the PR had two prior Controlled Medication Rule Violations:
  - i. Case 2017/CM08 - ASCOT DE MONTFLUQ, wherein the PR was imposed with a six (6) months Period of Ineligibility, 1’500 CHF fine and 1’000 CHF legal costs;
  - ii. and Case 2019/CM02 ALTANERA wherein the PR was imposed with one (1) year Period of Ineligibility, 3’500 CHF fine and 1’500 CHF legal costs.
- t. The FEI further explained that under Article 10.8.2 of the ECM Rules in circumstances where there is a third ECM Rule violation, within the previous 4 years, “the Hearing Panel shall have the discretion to

increase the Sanction to up to 4 years of Ineligibility. For a fourth or more ECM Rule violation, within the previous 4 years, the Hearing Panel shall have the discretion to impose a lifetime period of Ineligibility and shall in no circumstances render a Sanction of less than 4 years Ineligibility...”

- u. The FEI reviewed these decisions and submitted that in the PR’s first Rule Violation i.e., Case 2017/CM08 - ASCOT DE MONTFLUQ, the Horse was administered with Phenylbutazone and Dexamethasone five days prior to the Event by the head groom due to an accident. The Groom stated that the PR had not been aware of it. In addition, the general manager and trainer of the stables stated that he was as well not aware or informed of the administration of the medications by the head groom. The PR testified that he had never before ridden the Horse prior to the Event and that he was asked to ride it just one day before the vet check. The PR reiterated that he had not been aware of the medications given to the Horse.

In the PR’s second Rule Violation i.e., Case 2019/CM02 ALTANERA, the PR submitted that the horse was sedated with Detomidine (Domosedan) for the purpose of clipping 35 hours prior to the ride. The PR stated that this was usual procedure and that they never had any positive cases before.

In the present and third Rule Violation, the Horse was given Flumetasone 8 days before the ride. As the Event was rescheduled to a prior date an alleged miscommunication occurred between the staff leading to the Adverse Analytical Finding of Flumethasone.

- v. The FEI therefore alleged that notwithstanding the lack of information provided in the case of the PR’s third Rule Violation, the FEI have noted a common denominator in all three cases i.e., that all three Horses were administered with medications very close to the Events specifically, 5 days, 35 hours and 8 days prior to participating in their Event.

Therefore, the FEI deduced that the PR still has not educated himself enough on the Withdrawal and Detection Times of medications and does not consult with any veterinary personnel in relation to Withdrawal and Detection Times. Furthermore, it appears that the PR has taken no action to ensure that proper practices were adopted at the stable.

- w. In conclusion, the FEI submitted that it is the PR's personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*". The personal duty is non-delegable, and the PR has, in the FEI's view, at minimum been highly negligent in his expected duty of care. Consequently, the FEI submits that three (3) years of Ineligibility would be a proportionate sanction for the PR's third Rule Violation. In addition, the FEI proposed a 5'000 CHF fine to be imposed on the PR with a 1'500 CHF contribution to the legal costs.
- x. The FEI requested the following prayers for relief:
- (i) upholding the charge that the PR violated Article 2.1 of the EAD Rules;
  - (ii) imposing a period of Ineligibility of three (3) years on the PR, commencing on the day of the decision (the Provisional Suspension served by the PR be credited against the imposed Ineligibility Period);
  - (iii) 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;
  - (iv) fining the PR in the amount of five thousand (5,000 CHF); and
  - (v) ordering the PR to pay the legal costs of one thousand fifteen hundred (1,500 CHF) that the FEI has incurred in these proceedings.

## **VI. Jurisdiction**

- 21.** The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCM Regulations, as well as Article 18 of the IRs. The PR is a member of the URU-NF, which is a member of the FEI and as such is subject to the FEI Equine Controlled Medication Rules.

## **VII. The Decision**

- 22.** As set forth in Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication 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 that the findings of the laboratory are accurate. The

Tribunal is further satisfied that the test results evidence the presence of a Controlled Medication 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.

- 23.** As a result, the FEI has established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3.1 of the ECM Rules.
- 24.** Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 ECM rule violation, *i.e.*, the presence of a Controlled Medication Substance in a Horse's sample is six months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 OR 10.6 of the ECM Rules and subject to a potential increase pursuant to Article 10.8.2 of the ECM Rules.
- 25.** In cases brought under the EADCM Regulations, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation pursuant to Article 10.4 of the ECM Rules, or "*No Significant Fault or Negligence*" pursuant to Article 10.5 of the ECM Rules.
- 26.** For Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
- 27.** As confirmed by various CAS panels as well as FEI Tribunals, the PR must 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 PR. The PR's scenario must reach a 51% threshold for it to be successful.<sup>6</sup>
- 28.** The PR submitted a short statement without any corroborating evidence. He made no effort to explain how the Prohibited Substance entered the Horse's system. The Tribunal notes the lack of evidence in addition to the PR's theory that the Prohibited Substances in the Horse's system were the result of an injection from the stable vet before an Event which was moved to an earlier date. As a result, the Tribunal finds that the PR has not

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<sup>6</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.

established – on a balance of probability – how the Banned Substance entered the Horse’s system.

29. Where the first hurdle has not been met, *i.e.*, establishing the source of the Banned Substance, the Tribunal cannot continue with the second step and evaluate the PR’s degree of fault. The Tribunal finds that no reduction under Articles 10.4 and 10.5 of the ECM Rules is warranted in this case. The Tribunal further notes that Article 10.6 of the ECM Rules was not invoked.
30. The Tribunal has considered particulars of the case pursuant to Article 10.8.2 of the ECM Rules whereby in circumstances where a third ECM Rule violation is committed within the previous 4 years, “the Hearing Panel shall have the discretion to increase the Sanction to up to 4 years of Ineligibility. Taking this provision into account the Tribunal agrees with the FEI’s recommended sanction of three (3) years. The Tribunal notes the PR has been provisionally suspended since 4 March 2019. The PR will be credited for the time already served pursuant to Articles 10.10.4 of the EAD Rules.
31. The Tribunal further agrees with the FEI’s recommendation for the fine and costs.

#### **VIII. Disqualification of Results**

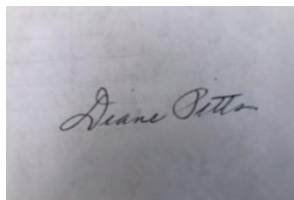
32. Since an ECM Rule has been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the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

#### **IX. Sanctions**

33. In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
  - a. upholds the charge that the PR has violated Article 2.1 of the ECM Rules;
  - b. imposes a period of Ineligibility of three (3) years on the PR.
  - c. the PR is fined in the amount of **five thousand Swiss Francs (CHF 5,000)**; and
  - d. the PR will contribute **one thousand five hundred Swiss Francs (CHF 1,500)** for costs that the FEI has incurred in these proceedings.

- 34.** No PR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
- 35.** Where a Person Responsible who has been declared Ineligible violates the conditions in section 34 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate.
- 36.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the Parties concerned.
- 37.** In accordance with Article 12 of the ECM Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of its receipt.

**FOR THE FEI TRIBUNAL**

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

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**Ms. Diane Pitts, One-Member Panel**