

DECISION of the FEI TRIBUNAL

Dated 2 February 2021

(FEI Case number: FEI 2019/CM14-BINT UM RUMAMA)

FEI Tribunal Hearing Panel:

Mr. Cesar Torrente (COL)

FEI Tribunal Reference: C19-0014

Horse/Passport: BINT UM RUMANA/106KL21/JOR

Person Responsible/ID/NF: Mr. Ghassan SAMI JIBARAT/10080370/JOR

Trainer/ID/NF: Ghassan SAMI JIBARAT/10080370/JOR

Event/ID: CEI1* 80 – Amman (JOR), 2019_CI_1670_E_S_01

Date of Event: 29-30 March 2019

Prohibited Substances (s): Oxyphenbutazone, Phenylbutazone, Salicylic Acid.

Bar Code Nos.: 5578181

I. Factual background

- 1.** Ghassan Sami Jibarat (FEI ID 10080370), the Person Responsible (the "**PR**"), is an Endurance Rider for Jordan.
- 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, BINT UM RUMANA (the "**Horse**") at the event CEI1* 80 – Amman (JOR) which took place between the 29-30 March 2019 (the "**Event**").
- 4.** The Horse's registered trainer in the FEI database at the time of the Event was Mr. Ghassan Sami Jibarat (FEI ID 10080370).
- 5.** Blood and urine samples were collected from the Horse on 30 March 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 of Oxyphenbutazone, Phenylbutazone, Salicylic Acid in the Horse's Sample collected at the Event. Oxyphenbutazone, Phenylbutazone, Salicylic Acid are "**Controlled Medication Substance(s)**" 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 29 April 2019, the FEI Legal Department officially notified the PR through the Royal Jordanian Equestrian Federation ("**RJEF**") of the presence of the Prohibited Substances in the A sample, the Rule Violation, and the potential consequences (the "**Notification Letter**"). The Notification Letter also included notice that the PR was provisionally suspended since there was the presence of three 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 request. He also did not challenge the results of the A sample.

III. Further Proceedings

- 9.** By email dated 2 December 2020, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel.
- 10.** By email dated 2 December 2020, the RJEF submitted an email to the FEI Tribunal stating that the PR admitted guilt to the RJEF which is why no B sample analysis, nor a hearing was requested.
- 11.** On 14 December 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 17 December 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 4 January 2021. 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.
- 12.** On 15 December 2020, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
- 13.** On 22 December 2020, the FEI Tribunal wrote to the RJEF requesting that they provide the Tribunal with evidence of an admission of guilt from the PR to the RJEF so we could confirm that the RJEF have authorisation to act on his behalf and accept these charges.
- 14.** On the 28 December, the RJEF attached a letter via email from the PR for the attention of the FEI Tribunal. The letter confirmed the admission of guilt and assurances to prevent this happening in the future.
- 15.** Neither Party requested an oral hearing.

IV. Considering

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

Statutes 24th edition, effective November 19, 2019 ("**Statutes**"), Arts.

1.5, 38 and 39.

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

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 2nd 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**"), 14th edition 2018, effective January 1, 2020, Arts. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

B. Person Responsible: Mr. Ghassan Sami Jibarat

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

- 16.** As noted earlier, via letter dated 22 December 2020 from the FEI Tribunal to the RJEF requesting verification they had the authority to accept the charges on behalf of the PR, the PR sent a letter to the FEI Tribunal dated 26 December 2020. The latter correspondence included an apology for the incident and assurances that he will ensure that any substances given to his horses in the future are not on the Equine Prohibited Substances List.
- 17.** No further submissions were received by the FEI.

B. Written Response of the FEI

- 18.** On 2 December 2020, the FEI provided its response in this case.
- 19.** The FEI stated that given that the PR had not provided any explanation to the Rule Violation at the time their response was issued (2 December 2020) they requested that the FEI Tribunal proceed and adjudicate on the Rule Violation.
- 20.** The FEI submitted the following about the Controlled Medication Rule Violation pursuant to the ECM Rules:
 - a) Article 3.1 of the ECM Rules make it the FEI’s burden to establish all the elements of the ECM Rule Violation charged, 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 in order 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.

- c) The results of the analysis of the A Sample taken from the Horse at the Event confirm the presence of Oxyphenbutazone, Phenylbutazone and Salicylic Acid and together constitute sufficient proof of the violation of Article 2.1 of the ECM Rules.

21. The FEI also submitted that:

- a) Pursuant to Article 9 of the ECM Rules, any 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 applies 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. Further, since this is a case with a Controlled Medication 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 PR competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 ECM Rules.
- b) In relation to the presumption of fault, the FEI referred to Article 10.2 of the ECM Rules which provides that a Person Responsible with no previous doping and/or Controlled Medication offences who violates Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six months, unless he is able to rebut the presumption of fault. In order to rebut such a presumption of fault the rules specify that he/she must establish to the satisfaction of the FEI Tribunal (it being his/her burden of proof, on the balance of probability¹):

¹ Art. 3.1 ECMR

(i) How the Prohibited Substances (here, Oxyphenbutazone, Phenylbutazone and Salicylic Acid) 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).

- 22.** The FEI also referred to the 'threshold' requirement insofar as proving how the Oxyphenbutazone, Phenylbutazone and Salicylic Acid entered into the Horse's system and confirmed that the PR had not provided any reply to the charges brought against him by the FEI thus far. There had been no explanation offered on how Oxyphenbutazone, Phenylbutazone and Salicylic Acid entered the body of the Horse. The FEI therefore submitted that the PR had not established how the substances entered the body of the Horse.
- 23.** The FEI then addressed the issue of fault and negligence in relation to the Rule Violation. They submitted that due to the PR's inactiveness in providing any explanation surrounding the circumstances that led to this Equine Controlled Medication Rule Violation the FEI cannot evaluate the PR's level of Fault, if any. Therefore, Art. 10.4 and Art. 10.5 of the ECM Rules cannot be applied. Consequently, no elimination or reduction of the period of Ineligibility in this case is possible under Article 10.4.
- 24.** The FEI therefore respectfully submits that the applicable period of Ineligibility imposed on the PR in the present case should be six (6) months.
- 25.** In relation to the matter of fines and costs, the FEI provided that pursuant to Article 10.2 of the ECM Rules, a violation of Article 2.1 means that the FEI may impose a fine on the PR of up to CHF 15,000 '*unless fairness dictates otherwise*' and should be ordered to pay '*appropriate legal costs*'.

- 26.** The FEI also respectfully submitted that fairness does not dictate that no fine be levied in this case, and duly requests that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI has incurred in pursuing this matter.
- 27.** They furthered that the FEI Guidelines for fines and contributions towards legal costs provide additional guidance on the appropriate fines and legal costs for Controlled Medication and Banned Substance cases considering the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc. The FEI also highlighted that for a first time Controlled Medication offence, as in the present case, without any reduction of the Ineligibility period the proposed range for the fine is between 3'000 -5'000 CHF with a contribution towards legal cost ranging between 1'000 – 5'000 CHF.
- 28.** For the reasons set out above, the FEI respectfully requested the following prayers for relief:
- I. upholding the charge that the PR has violated Article 2.1 of the ECM Rules;
 - II. 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 Article 9 and 10.1.2 of the ECM Rules;
 - III. Imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the final decision (the Provisional Suspension already served by the PR shall be credited against the imposed Ineligibility Period);
 - IV. fining the PR in the amount between 3'500 and 5'000 CHF; and
 - V. ordering the PR to pay the legal costs of 1'500 CHF that the FEI has incurred in these proceedings.

VI. Jurisdiction

- 29.** 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 RJEF, which is a member of the FEI and as such is subject to the FEI Equine Controlled Medication Rules.

VII. The Decision

- 30.** 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 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 scientific evidence from the test results confirm the presence of 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.
- 31.** As a result, the FEI has established confirmation of the adverse analytical findings and sufficiently proven the objective elements of the violation in accordance with Article 3.1 of the ECM Rules.
- 32.** Pursuant to Article 10.2.1 of the ECM 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.
- 33.** 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.
- 34.** 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.
- 35.** 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. However, it was attested that in this case, the PR did not reply to the charges brought against him by the FEI nor offer an explanation as to how the adverse analytical findings of Oxyphenbutazone, Phenylbutazone and Salicylic Acid entered the Horse's system.
- 36.** The only evidence that was submitted by the PR was upon request from the FEI Tribunal after the charges had been made to confirm his admission of guilt directly to the Tribunal to ensure he was aware of the charges despite the RJEF accepting them on his behalf. This was in the form of a letter dated

26 December 2020 from the PR and did not contain any corroborating evidence regarding the adverse findings. In this letter he made no effort to explain how the Prohibited Substances entered the Horse's system. As a result, the Tribunal finds that the PR has not established – on a balance of probability – how the Prohibited Substances entered the Horse's system.

37. 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.
38. The Tribunal further agrees with the FEI's recommendation for the fine and costs.

VIII. Disqualification of Results

39. 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

40. 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 **six (6) months** on the PR. In this regard we note that the PR served a Provisional Suspension from the 29 April 2019 until the 1 November 2019 which will be credited against the period of Ineligibility imposed in this decision. Therefore, the PR has already served the **six (6) month** period of ineligibility imposed in this sanction;
 - c. the PR is fined in the amount of **three thousand five hundred Swiss Francs (CHF 3,500)**; 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.

- 41.** 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).
- 42.** Where a Person Responsible who has been declared Ineligible violates the conditions in section 40 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.
- 43.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the Parties concerned.
- 44.** 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



Mr. Cesar Torrente, One-Member Panel