

DECISION of the FEI TRIBUNAL

dated 7 April 2021

in the matter of

Mr Joaquin ALBISU

(FEI Case number: FEI 2020/BS07 – EASY BOY 23)

FEI Tribunal Hearing Panel:

Mr Mohammed Al-Saberi (UAE), one-member panel

FEI Tribunal Reference: C21-0011

Person Responsible/ID/NF: Joaquin ALBISU / 10161938 / ARG

Event/ID: CSIO4* - Wellington FL (USA), 2020_CI_0218_S_S_01

Date of Event: 25.02-01.03.2020

Prohibited Substance: Boldenone, Boldienone, Boldenone Undecylenate

Bar Code Nos.: 5590999

I. Factual background

1. Mr Joaquin ALBISU (FEI ID 10161938), the Person Responsible ("**the PR**") and rider for Argentina, competed with the Horse EASY BOY 23 ("**the Horse**") at the CSI04* in Wellington, FL (USA) between 25 February and 1 March 2020 ("**the Event**").
2. The Fédération Equestre Internationale ("**the FEI**" 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. At the occasion of the Event, the Horse was tested, and returned a positive result for Boldenone, Boldienone and Boldenone Undecylenate, which are Banned Substances under the FEI's Equine Prohibited Substances List. Boldenone, Boldienone and Boldenone Undecylenate are anabolic steroids with anabolic effects that increase muscle mass and modify behaviour. Boldienone results from the biotransformation of Boldenone and Boldenone Undecylenate is an ester and pro-drug of Boldenone.
4. The positive finding of Boldenone, Boldienone and Boldenone Undecylenate in the Horse's sample gave rise to an Anti-Doping Rule Violation.
5. As a consequence of said positive result, the PR was provisionally suspended by the FEI as of 26 March 2020, in accordance with art. 7.4.1 of the FEI Equine Anti-Doping Rules (the "**EAD Rules**"). The PR was informed of his suspension by way of a notification letter from the FEI on 26 March 2020, informing him of a possible violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules.

II. Initial Proceedings

6. On 26 March 2020, the FEI Legal Department officially notified the PR, the Argentinian Equestrian Federation ("**ARG-NF**") and the Salvadorian Equestrian Federation ("**ESA-NF**", the National Federation of the Horse), of a violation of Article 2.1 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample) of the EADRs, based on the Laboratory's Adverse Analytical Finding of Boldenone, Boldienone and Boldenone Undecylenate in the Horse's Sample collected at the Event and the potential consequences (the "**Notification Letter**").

7. Upon request from the FEI, the PR submitted his position on 1 April 2020, promptly admitting the violation. His position was later completed on 26 August 2020, 28 January 2021, and 2 February 2021. The PR's positions, and supportive documentation, will be addressed *infra*, under V.

III. Further Proceedings

8. By email dated 15 March 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel for the adjudication and approval of a Settlement Agreement. In view of the agreement reached between the parties, the Ineligibility Period would terminate on 28 April 2021.
9. On 26 March 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel.
10. On 26 March 2021, the PR informed the Tribunal that he did not have any objections to the constitution of the hearing panel.
11. On 26 March 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
12. Neither party requested an oral hearing.

IV. Considering

A. 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 and 167 (“GRs”).

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

FEI's Equine Anti-Doping and Controlled Medication Rules, 2nd edition, changes effective 1 January 2020 (“EADCM Rules”).

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

B. **Person Responsible:** Mr Joaquin ALBISU.

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."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* may be considered additionally responsible under this Article and Articles 2.2 - 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

EAD Rules Art. 7.6.1: "In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

V. The Parties' Submissions

A. The Submissions of and on behalf of the PR:

13. The PR submitted his positions in the context of the present FEI proceedings, on 1 April 2020 and 28 January 2021 personally, and on 26 August 2020 and 2 February 2021, through his legal counsel. Those various positions are summarised below.
14. The PR is a young Argentinian rider, who has been involved in equestrian sports for 25 years, with few resources, who does not come from a wealthy background. His career depends therefore on opportunities, brought forward, among others, by sponsorships. In this sense, the PR has not the resources to own his own horse at a high level of competitions. The PR's stables are in Buenos Aires, since February 2018, where there are 20 horses.
15. At his stables, the PR ensured that all his staff is properly trained. He has two grooms which he made sure had proper background and knowledge of horse's management, as well as high ethical standards. The PR further explained that at his stables, he put in place a strict protocol and policies in order to eliminate any potential risks, listing the various measures taken in this respect. To support his case, the PR submitted an affidavit from Dr Ann Rodger, an FEI veterinarian who has been the chief veterinarian of the Argentinian team at the 2019 Pan American Games, and who is the only veterinarian in charge of his horses. Dr Rodger examines the horses at the PR's stables on a weekly basis and confirmed that the yard "*has the highest levels of diligence possible towards the welfare of the horses and their medical care*", further indicating having never prescribed any of the three Prohibited Substances to any of the PR's horses, the only administered drug to the PR's horses were the vaccination against Influenza.
16. The PR spoke, *inter alia*, with the Owner of the Horse and the veterinarian, in order to determine how the Banned Substances entered the Horse's system.
17. The Owner (and groom) of the Horse, Andrea Alvarado Juncosa, provided an affidavit explaining the source of the Prohibited Substance. The Owner performed an anemia treatment of 8 weeks to the Horse, by injecting weekly 2 ml of anemia medicine called Anabolde, Boldenone Undecylinate. This treatment started on 4 December 2019, and finished on 3 February 2020, and was based on a veterinary prescription signed by Dr Eduardo Saravia (which the PR never met).
18. From January to March 2020, the PR stayed at Paulo Santana's stables, riding daily

3-4 horses. Andrea Alvarado was a member of staff of Paulo Santana. In this context, the Horse was put forward for sale, in an auction organised by Paulo Santana. It is in this context that the PR got to ride the Horse EASY BOY 23 (which he rode maximum 3-4 times a week), so that he could convince sponsors to buy the Horse and for him to go to the Tokyo Olympic Games. Thus, the PR never really had the control of the Horse, which was under the care of Andrea Alvarado (and Paulo Santana).

19. Before and after the Event, the Horse always stayed by Paulo Santana's stables, under the control of Andrea Alvarado. The PR was never involved in the Horse's care or management.
20. The PR is not an employee of the Paulo Santana's stables, also since he teaches students about horse riding and the welfare of the horse.
21. Despite not being the Owner nor taking care of the Horse, the PR tried his best to make sure that the Horse was clean, by the following procedure:
 - He checked the Horse personally, with the help of Dr Andre Ferreira Onofre, who was the veterinarian in charge of the Horse in Wellington.
 - The Horse appeared to be in good form, and healthy.
 - The PR verified the medical records and the logbook of the Horse, making sure that no Prohibited Substances were given to the Horse. He further double checked with Dr Onofre, which he trusted, to make sure that all the treatments the Horse had received were indicated in the documents.
 - The PR never saw any medications administered to the Horse in the stables and did not discuss which medications should be given to the Horse with Dr Onofre.
22. The PR promptly admitted the anti-doping violation, despite not having administered nor being consulted in the treatment administered to the Horse. He is well aware that it is his responsibility nonetheless, in particular as a high-performance rider. He is also well educated about the EADCMRs and take great seriousness of his anti-doping responsibilities as an Athlete.
23. The equestrian sport is his livelihood, for him and his family, and the PR worked very hard to get where he is now. He has never been the subject of any conviction.

24. The PR further fully collaborated with the FEI, in particular by way of two conference calls held on 9 and 17 June 2020.
25. The PR's integrity and care for horses has been further supported by various statements submitted by the PR, *inter alia* a witness statement from Martin Mulhal, the PR's trainer since 2013, and a witness statement from Francisco Galli, the ARG-NF Chef d'Equipe.

B. The Submission of the FEI:

26. On 15 March 2021, the FEI provided the Tribunal with the Settlement Agreement reached between the Parties, which contains accordingly the FEI's position. The FEI's position is summarised below.
27. Based on the PR's accounts of the facts, the FEI decided to consult its external scientific expert, which gave the following explanation:

"Boldenone Undecylenate is a semi-synthetic drug made up of Boldenone linked to a "greasy" chemical called an "ester". When administered via intramuscular injection, a depot is formed from which Boldenone Undecylenate is slowly released into the body and then transformed into Boldenone.

The Boldenone in the body can then exert its anabolic effect and will be converted to its metabolites. One of Boldenone's metabolites is Boldienone also known as Boldione.

Both Boldenone and Boldienone are found naturally especially in intact males and are also known to be produced in horses via microbial metabolism of natural steroids."
28. In the expert's opinion, the administration of Anabolde can therefore account for the full finding of the Prohibited Substances at hand.
29. The substances were administered via intramuscular injection. The withdrawal time for certain anabolic steroids such as Boldenone can be up to several months.
30. Therefore, the explanation provided by the PR is scientifically plausible and the PR has established how Boldenone, Boldienone and Boldenone Undecylenate entered the Horse's system.
31. With respect to the duration of the Ineligibility Period to be imposed, the FEI considered, among others, (a) the fact that the PR teaches students not only about riding but also about the welfare of the horse, (b) since he is a potential rider for the

Argentinian national team for the Olympic Games, he is certainly well informed about the anti-doping rules, and the necessary anti-doping procedures, (c) the PR ensured to have the right persons in place as his Support Personnel, and personally hired all members of his staff, considering their past experience and horse welfare approach, (d) even though he did not control the horse which he rode at the occasion of the Event, the PR did what was expected of him as an Athlete before riding and competing with the Horse, adopting various precautions that he detailed, (e) the PR has been very cooperative with the FEI, to the extent that he wanted to provide additional information about certain facts not only relating to his specific case, (f) the PR explained in details the procedures and policies he put in place at his stables to prevent any anti-doping rule violation, and (g) the PR provided various witness statements, including from (i) his own veterinarian, (ii) the Argentinian Chef d'Equipe, (iii) another rider, (iv) his two grooms and (v) his trainer, which came in support of his case.

32. In view of the above, the FEI is of the opinion that the PR trusted the Support Personnel of the Horse to do their job and did not suspect that the Owner would administer a Banned Substance to the Horse without his knowledge.
33. Based on the elements and evidence produced, the FEI is satisfied that the PR bears No Significant Fault or Negligence for the rule violation in accordance with Art. 10.5 of the EAD Rules.
34. All in all, the Ineligibility Period to be imposed on the PR shall be fourteen (14) months, and a fine, amounting to 5'000 CHF, shall be imposed on the PR. This takes also into account the fact that the PR has been honest, fully cooperated with the FEI and promptly admitted the violation, only 5 days after notification.

VI. The Decision

35. Agreement between the Parties:

Quote

3. NOW, THEREFORE, THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse EASY BOY 23 at the CSI04* - Wellington FL, in the USA, between 25 February and 1 March 2020 the PR, Mr. Joaquin ALBISU and the FEI agree in accordance with 7.6.1 EAD Rules on the following:
- (a) The PR admits the violation of Article 2.1 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*); and
 - (b) The PR established on a balance of probabilities how Boldenone, Boldienone and Boldenone Undecylenate entered the Horse's system;
 - (c) The PR has established that he bears No Significant Fault or Negligence for the Rule Violation;
 - (d) The period of Ineligibility imposed on the PR shall be fourteen (14) months, starting on the date of sample collection i.e. 29 February 2020 due to the application of Timely Admission, ending on 28 April 2021;
 - (e) The Provisional Suspension imposed on the PR on 26 March 2020, shall be credited in the final ineligibility period;
 - (f) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules;
 - (g) In accordance with EAD Rules Articles 9.1 and 10.1.2 the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
 - (h) All the results from the sample collection i.e. 29 February 2020 and the imposition of the provisional suspension i.e. 26 March 2020 shall be disqualified;
 - (i) The PR shall incur a fine of 5 000 CHF;
 - (j) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- 3.2 The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

- 3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI.
- 3.4 The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.
- 3.5 This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

*** End Quote***

VII. Jurisdiction

36. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EAD Rules, as well as Article 18 of the IRs. The PR is a member of the Argentinian Equestrian Federation, and as such is bound by the EAD Rules. Article 7.6.1 of the EAD Rules provides for agreements to be reached between parties, subject to approval by the Tribunal. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VIII. Approval of Agreement

37. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probabilities – that the PR bears No Significant Fault or Negligence for his first anti-doping rule violation.
38. Furthermore, the Tribunal also takes note that the FEI is satisfied that the sanction of fourteen (14) months of Ineligibility period will be proportionate for this anti-doping rule violation. The Tribunal also noted that the FEI considered the various elements brought by the PR, and analysed the scientific explanations brought by the PR, comparing it with the scientific analysis provided by their external scientific expert.

39. The Tribunal wishes to emphasise that it did not evaluate whether the PR has met the burden of proof regarding the level of Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
40. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADCM Rules.
41. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2020/BS07 EASY BOY 23.

IX. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Joaquin ALBISU concerning the case 2020/BS07 EASY BOY 23 (C21-0011 Joaquin ALBISU) is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph VI above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 12.2 of the EADCM 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.
3. This Decision shall be notified to the PR, to the NF of the PR, and to the FEI.
4. This Decision shall be published in accordance with Article 13.3 of the EADCM Rules.

FOR THE TRIBUNAL



Mr Mohammed Al-Saberi, One-Member Panel