

**DECISION of the FEI TRIBUNAL**

**dated 18 June 2021**

**(FEI Case number: FEI 2019/BS50-CYBELE DE L'OULE)**

**FEI Tribunal Hearing Panel:**

**Mr Christopher Hodson QC**

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**FEI Tribunal Reference:** C21-0013

**Horse/Passport:** CYBELE DE L'OULE/105VH42/UAE

**Person Responsible/ID/NF:** Mr. Sh Tahnoon Bin Khalifa AL NAHYAN  
10093006/UAE

**Trainer/ID/NF:** Mr. Mohd Salem Abdulla AL AMERI/10081586/UAE

**Event/ID:** CEI1\* 80 - Bou Thib (UAE), 2019\_CI\_1879\_E\_S\_01

**Date of Event:** 01-02.11.2019

**Prohibited Substances:** Arsenic, Flunixin

**Bar Code Nos.:** 5578736

## **I. Factual background**

- 1.** Mr. Sh Tahnoon Bin Khalifa AL NAHYAN (FEI ID 10093006), the Person Responsible **(the PR)**, is a rider for the UAE.
- 2.** Mr. Mohd Salem Abdulla AL AMERI, (FEI ID 10081586), was the registered Trainer of the Horse in the FEI database at the time of the Event, the Additional Person Responsible **(the APR)**.
- 3.** The Fédération Equestre Internationale **(the FEI and together with the PR and APR, 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).
- 4.** The PR participated with the horse, CYBELE DE L'OULE **(the Horse)** at the CEI1\* 80 - Bou Thib, in UAE on 1-2 November 2019 **(the Event)**.
- 5.** Urine and Blood samples were collected from the Horse on 2 November 2021 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", which are collectively (the Sample) with reference number 5578736.
- 6.** The laboratory analysis of the A sample reported an adverse analytical finding for Arsenic and Flunixin in the urine sample, both of which are "Prohibited Substances" under the FEI's Equine Anti-Doping and Controlled Medications Regulations **(the EADCMRs)**.
- 7.** Arsenic is a stimulant used in the treatment of acute or refractory leukaemia and to aid convalescence, it is classified as a Banned Substance under the FEI Prohibited List. Flunixin is a non-steroidal anti-inflammatory drug with analgesic effect and is classified as Controlled Medication Substance under the FEI Prohibited List.
- 8.** The positive finding of Arsenic and Flunixin in the Horse's sample gave rise to an Anti-Doping Rule Violation under the EADCMRs. In particular, the EADCMRs applicable to these proceedings were adopted by the General Assembly in November 2018 and came into force on 1 January 2019. They apply to *'each Person Responsible and their Support Personnel by virtue of their membership in, accreditation by, or participation in the FEI or National*

*Federation, or in their activities, Competitions or Events*'.<sup>1</sup> Most relevantly for present purposes, Article 2.1 of the EAD Rules<sup>2</sup> prohibits 'The presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample'. Furthermore, under Article 2.2 of the EAD Rules, the 'Use or Attempted Use of a Banned Substance or Banned Method' are prohibited.

9. In addition, the administration of a Banned Substance at any time to horses competing in events to which the EAD Rules apply constitutes a violation of Article 2.2 of the EAD Rules, and its presence in a horse's sample at any time constitutes a violation of Article 2.1 of the EAD Rules.

## II. Initial Proceedings

10. On 2 December 2019, the FEI Legal Department officially notified the PR and the APR through the National Federation of the UAE (**the UAE-NF**), of the presence of the Prohibited Substances in the A sample collected at the Event, the rule violation, and the potential consequences (**the Notification Letter**). In accordance with Article 7.4.1 EAD Rules, the Notification Letter also included notice that the PR and the APR were provisionally suspended from all competition until further notice from 2 December 2019 and granted them the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal (**the Tribunal**) pursuant to Article 7.4.4 of the EADR.
11. The Notification Letter also included notice that the Horse was also provisionally suspended for a period of two months, from the date of the Notification Letter, i.e., 2 December 2019 until 1 February 2020. The Provisional Suspension of the Horse was not challenged, and the Horse served the entire two-month period.
12. The PR and the APR were also informed in the Notification Letter of their right to request an analysis of the B sample, neither the PR or the APR requested for a B sample analysis and this right was therefore waived.

## III. Further Proceedings

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<sup>1</sup> Introduction to the EADCMR at p 2.

<sup>2</sup> Article 10.8.6 EAD Rules: Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method- Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction.

13. By email dated 25 March 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel.
14. On 15 April 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to constitution of the hearing panel by 20 April 2021. The PR and APR were also granted the opportunity to respond to the FEI's allegations by submitting their respective positions by 5 May 2021. The PR and APR were also informed that the Tribunal will generally decide such cases based on written submissions however the Parties were informed that they had the right to request an oral hearing by 10 May 2021, failing which the right for an oral submission would be deemed as waived.
15. On 20 April 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
16. Neither the PR nor APR communicated any objections to the composition of the hearing panel. Therefore, by not responding within the deadline, it was deemed that they agreed to the constitution of the hearing panel.
17. Neither Party requested an oral hearing.

#### **IV. Summary of Legal Authority**

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

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

General Regulations, 24<sup>th</sup> edition, January 1<sup>st</sup>, 2019, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 2<sup>nd</sup> edition, changes effective January 1<sup>st</sup>, 2019. 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 Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, changes effective January 1<sup>st</sup>, 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, changes effective 1<sup>st</sup>, January 2019.

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

FEI Endurance Regulations ("**ERs**") effective January 1<sup>st</sup> 2019.

FEI Code of Conduct for the Welfare of the Horse.

## **B. Justification for sanction:**

**GRs Art. 143.1:** "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

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

**EAD Rules Art. 3.1:** "Burdens and Standards of Proof. The FEI shall have the burden of establishing that an EAD Rule violation has occurred. The standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof

beyond a reasonable doubt. Where these EAD Rules place the burden of proof upon the Persons Responsible and/or member of their Support Personnel to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except where a different standard of proof is specifically identified”.

**EAD Rules Art. 10.2:** “The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reductio or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

**EAD Rules Art. 10.8.6:** “Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method. Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction”.

**ECM Rules Art. 2.1.1:** “It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1.”

**ECM Rules Art. 10.2:** “The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Equine Anti-Doping or Controlled Medication violation”.

**Article 800 of the Endurance Rules:** “the Trainer” is defined as the person who is in charge of the preparation of the Horse both physically and

mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice".<sup>3</sup>

## **V. The Parties' Submissions**

### **The Submissions of the PR**

**18.** The PR has submitted several statements wherein he asserted his innocence for the EADCMRs violation and that he had no direct involvement in the case. These statements can be summarised as follows:

- Statement from the PR, (dated 18 December 2019) wherein he explained that he has been around horses his entire life and began endurance riding with Emirates Heritage Club in Bou Thib as soon as he was eligible, owning his own stables and competes with his own horses. He also stated that he has devoted significant energy to educating himself about horse welfare and always prioritises the welfare of his horses over results. He furthered that he has always been extremely careful to ensure that he understands and complies with the FEI Rules AND in relation to Clean Sport and he is extremely upset to discover that he may have inadvertently breached the FEI EADCMRs;
- In relation to the finding of Flunixin in the Horse, the PR explained that he does not keep either of these substances in his stables however his treating veterinarian carries products containing Flunixi and the Horse had been treated for colic with Gastrogard, Finadyne and 30 litres of fluid 6 days before the ride and had recovered very well. Typically, he added that the controlled medication from these products would have left a horse's system within that time, and he was therefore comfortable entering the Horse in the Event, but it appears it may not have left the Horse's system by the time of the Event;
- The PR also submitted a statement from his veterinarian to support the reason he provided for the presence of Flunixin in the Horse. The veterinarian explained that the Horse had abdominal aches or intestinal pain (colic) and on 28 October 2019 he was therefore treated urgently by the assistant veterinarian with a dose of Flunixin, for abdominal pain,

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<sup>3</sup> Due to the above specificities of the Endurance discipline with Trainers making relevant decisions about their horses, a Trainer is always regarded as an additional Person Responsible in accordance with Art. 118.3 of the General Regulations. This was further confirmed in the recent FEI Tribunal Decision of the cases 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI.<sup>3</sup>

in combination with cleaning the stomach with oil and water mix and fluids through a drop. After 3 days the mare was fully recovered and could return to normal activity;

- In relation to the Banned Substance – Arsenic, however, the PR alleged that he was at a loss to show how it was in his stable. He explained that further to discussions with his team he understood that a week prior to the Event, the stables had been treated for pest control. He stated that although the team had checked the ingredients against the FEI Clean Sport App before the treatment, and the pest control company had been informed by the team that this was a competition yard, so they were not to use any other products that had not been checked. However, after the PR made further enquiries with the pest control company, Discovery Landscape & Gardening Services LLC, they confirmed they used additional products which contained arsenic, a result of which the PR stated that he was separately assessing the appropriate action to take against this company;
- On the basis of the explanation provided for the finding of Arsenic, the PR concluded that the Horse came into contact with a product contaminated with the Banned Substance as a result of the pest control treatment. He maintained that he and his team checked the ingredients against the FEI Clean Sport platform, prior to the pest control visit therefore he is not sure what he or his team, could have done differently to prevent this contamination and therefore he was not at fault or negligent in respect of the banned substance entering the Horse's system and should not be subject to any sanctions (other than the automatic elimination for a positive sample) nor subject to any suspension from competition.
- Furthermore, the PR provided a summary of services provided from the pest control company which detailed that the stable area was sprayed on 27 October 2019, with pesticide (LAMATIN 5 EC). The effective materials were Lambda Cyhalothrin (95% clarity), 50 g/L % supplementary materials 950 g/L, (5% effective material & 95% supplementary materials). Furthermore, that on 29 October 2019, the pest control Vertimic T.K.M was used at the area surrounding the stables and that all the green stretches at the stables were sprayed with the anti-spiders;
- However, the FEI noted that Arsenic is not mentioned in any of the pest control reports. The FEI also confirmed that they had sent several reminders to the PR in order for him to provide further information on the products used for pest control, its exact ingredients, the amount of such product, how the horses could have come into contact with the alleged contamination etc., but no further submissions were provided



by the PR apart from a statement (dated 12 January 2021) confirming that he has submitted all the testimonials required substantiating his innocence for this violation.

### **The Submissions of the APR**

- 19.** The FEI confirmed that no information was received from the APR in relation to this case. Thus, the APR has not provided any possible reason as to the potential source for the positive findings in the Horse, despite reminders sent by the FEI to the UAE-NF to provide such information.

### **Written Response of the FEI**

- 20.** In respect of the violation of the EADCMRs of the PR and the APR, the FEI noted Article 3.1 of the EAD Rules makes it the FEI's burden to establish all the elements of the EAD Rule violation charged, to the comfortable satisfaction of the FEI Tribunal. Furthermore, the FEI stated that the elements of an Article 2.1 violation are straightforward, that 'It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1'. Instead, it is a 'strict liability' offence, established simply by proof that a Banned Substance was present in the Horse's Sample. As such, the results of the analysis of the A Sample taken from the Horse at the Event confirming the presence of Arsenic and Flunixin constitutes sufficient proof of the violation of Article 2.1 of the EAD Rules.
- 21.** The FEI also pointed out that neither the PR nor the APR disputed the presence of Arsenic and Flunixin in the Horse's Sample. Accordingly, the FEI respectfully submitted that it discharged its burden of establishing that the PR and Trainer has violated Article 2.1 of the EAD Rules.

### **Disqualification of results**

- 22.** The FEI also noted that in respect of these proceedings Article 9 of the EAD Rules is applicable which provides that "*an EAD Rule violation in connection with a test in a given Competition automatically leads to the Disqualification of the result of the PR and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes*". This rule will be applied even if the period of Ineligibility is reduced or eliminated under Article 10, e.g., on the basis of No (or No Significant) Fault or Negligence. In addition, the FEI explained that since this is a case with a Banned Substance, occurring during or in connection with an Event, in order to safeguard the level playing field, the FEI may

disqualify all of the PR's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 EADR. In cases of team competition, Article 11 EADR is also applied.

- 23.** The FEI highlighted that there is a presumption of intentional administration in order to enhance performance i.e., Where a Banned Substance is found in a horse's sample, a clear and unequivocal presumption arises under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance, and they referred to the case of CARRIERE ZWEI<sup>4</sup>, wherein "The establishment of the objective elements of a doping offence creates a presumption of guilt of the PR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the Horse"; CAMIRO<sup>5</sup>, "the establishment of the objective elements of a doping offence creates the presumption of guilt of the PR").

The FEI noted that this presumption also mirrors the World Anti-Doping Code, under which exactly the same presumption is applied, e.g., Eder v Ski Austria<sup>6</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>7</sup>, where no mitigation of 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".

- 24.** The FEI furthered that as a result of the presumption of fault, Article 10.2 of the EAD Rules provided that a PR/APR (for the purposes of this case "he" refers to the PR and APR) with no previous doping offences who violates Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault. In order to do

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<sup>4</sup> FEI Tribunal decision dated 10 August 2007 at para 4.1(f)

<sup>5</sup> FEI Tribunal decision dated 22 December 2008 at para 65

<sup>6</sup> CAS 2006/A/1102, award dated 13 November 2006 at para 52

<sup>7</sup> CAS 2007/A/1395, award dated 31 March 2008 at para 88

this, the rules specify that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on the balance of probability<sup>8</sup>):

- How the Prohibited Substances (here, Arsenic and Flunixin entered into the horse's system; and
  - That he bears No Fault or Negligence for that occurrence, i.e., that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or
  - That he bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules).
- 25.** The FEI further explained that if the PR and APR failed to discharge this burden, the presumption of intentional administration to enhance performance stands, and therefore the presumptive two-year ban under Article 10.2 is applied.
- 26.** In respect of the 'threshold' requirement and proving how the Arsenic and Flunixin entered into the Horse's system, the FEI referred to the EAD Rules which stipulate, and the jurisprudence of the FEI Tribunal and the CAS are very clear: that it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. They furthered that 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 Banned Substances in the Horse.
- 27.** The FEI submitted in this context that the PR and APR must provide clear and convincing evidence that proved how Arsenic and Flunixin entered the Horse's system. However, in these proceedings, the FEI noted the PR provided an explanation of how the Flunixin entered the Horse's system i.e., through a colic treatment 5 days before the Event. They also highlighted that in this context, the treatment administered was within the

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<sup>8</sup> Art 3.1 EADR

detection time for Flunixin of 6 days<sup>9</sup>. The FEI recommended that a sufficient safety margin is applied (at least two times the detection time, which equals 12 days withdrawal time for Flunixin) after the administration of Controlled Medication Substance in order to be assured of that the correct withdrawal time is applied. The FEI argued that the Horse should not have competed so soon after the colic treatment and even within the detection time for Flunixin. The FEI also questioned whether the Horse was fit to compete so soon after a colic, wherein the Horse took 3 days to recover from the colic and competed only 2 days after the recovery and 5 days after the colic treatment. Notwithstanding the latter concerns, the FEI accepted that the explanation provided for the source of Flunixin is likely to have caused the AAF of Flunixin in the Horse.

- 28.** Nevertheless, the FEI argued that neither the PR nor the APR, have provided any substantiated evidence on how the Banned Substance Arsenic entered the Horse system, on a balance of probabilities. The FEI considered that the PR provided for a potentially plausible scenario, but there is no causal link between the treatment with pesticides and the positive finding of Arsenic. The pest control company did not confirm that it used Arsenic, the PR did not provide further evidence in order for the FEI to have evaluated the plausibility of this explanation regarding the alleged contamination of pest control treatments on the yard. The FEI was therefore not satisfied that the PR (or APR) had established the source of Arsenic in the Horse. In this regard, they submitted that the threshold requirement of proving how both the Prohibited Substance Arsenic and Flunixin entered the Horse's system, was not fulfilled, neither by the PR nor the Trainer.
- 29.** In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI outlined that the starting point of any evaluation is the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, i.e., his personal duty to ensure that "*banned substance is present in the Horse's body*". Furthermore, they explained definitions of *Fault*, as defined in Appendix 1 of the EAD Rules:

*"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk... In assessing the Person Responsible's degree of Fault, the circumstances*

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<sup>9</sup> [https://inside.fei.org/system/files/FEI%20Detection%20Times%202018\\_0.pdf](https://inside.fei.org/system/files/FEI%20Detection%20Times%202018_0.pdf)

*considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour."*  
(Emphasis added)

*"No fault - The Person Responsible establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance."*

*"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation... the Athlete must also establish how the Prohibited Substance entered the Horse's system."*

- 30.** In respect of the arguments relating to "Fault", the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse<sup>10</sup>. They furthered that it is the PR and APR personal duty to ensure that no Banned Substance are present in the Horse's body and that for No Fault or Negligence to be applied, pursuant to the Definition of No Fault or Negligence, the PR has 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 administered to the Horse, or the Horse's system otherwise contained, a Banned Substance.
- 31.** The FEI maintained that the PR and APR failed to establish the source of Arsenic that was present in the Horse's sample and as such this threshold requirement was not fulfilled. As a result of which the FEI submitted that there can be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period in accordance with Art 10.2 EADR.
- 32.** The FEI also considered that due to the lack of information on the circumstances that led to this Equine Anti-Doping Rule Violation the FEI cannot evaluate the PR's and APR's level of Fault or Negligence for the Rule Violation, if any, according to Art. 10.4 and Art. 10.5 of the EAD Rules. Consequently, no elimination or reduction of the standard period of

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<sup>10</sup> Veterinary Regulations Article 1055.

Ineligibility as stated in Art 10.2 EADR in this case is possible under Article 10.4. or Art. 10.5 of the EADR.

33. The FEI therefore respectfully submitted that the applicable period of Ineligibility to be imposed on the PR and APR (the Trainer) in the present case shall be two (2) years respectively.
34. In respect of the matter of fines and costs, the FEI referred to Article 10.2 of the EAD Rules which provide that a Person Responsible for an Article 2.1 violation should also be fined up to CHF 15,000 '*unless fairness dictates otherwise*' and should be ordered to pay '*appropriate legal costs*'. The FEI respectfully submitted that fairness does not dictate that no fine be levied in this case and requested that a fine be imposed on the PR and APR and that they are ordered to pay the legal costs that the FEI incurred pursuing this matter.
35. In summary and taking into account all the particulars of these proceedings, the FEI requested the following prayers for relief:

**In respect of the PR**

- (i) upholding the charge that the PR has violated Article 2.1 of the EAD Rules;
- (ii) disqualifying the result of the PR and Horse combination obtained in the Competition and 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;
- (iii) imposing a period of Ineligibility two (2) years on the PR, commencing on the date of the decision, and crediting the Provisional Suspension already served as of 2 December 2019 (the date upon which the Provisional Suspension was imposed);
- (iv) fining the PR a fine of 7 500 CHF; and
- (v) ordering the PR to pay legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

**In respect of the APR - Trainer**

- (vi) upholding the charge that the APR (Trainer) has violated Article 2.1 of the EAD Rules;

- (vii) imposing a period of Ineligibility two (2) years on the APR, commencing on the date of the decision, and crediting the Provisional Suspension already served as of 2 December 2019 (the date upon which the Provisional Suspension was imposed);
- (viii) fining the APR a fine of 7 500 CHF; and
- (ix) ordering the APR to pay legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

## **VI. Jurisdiction**

- 36.** The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs. The PR and APR are members of the UAE-NF, which is a member of the FEI, as such the PR and the APR are bound by the EAD Rules.

## **VII. The Decision**

- 37.** Given the FEI's single charge of Article 2.1 of the EAD Rules and the wording of Article 10.8.6 of the EAD Rules, this decision will refer to the EAD Rules only. As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's sample. The Tribunal is satisfied that the laboratory reports relating to the A sample reflect that the analytical tests were performed in an acceptable manner and the findings of the laboratory are accurate. The Tribunal is further satisfied that the test results evidenced the presence of Banned Substances in the A sample taken from the Horse at the Event. The Tribunal notes that the PR and APR did not challenge the accuracy of the test results or the positive findings.
- 38.** As a result, the Tribunal accept that FEI has established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3 of the EAD Rules.
- 39.** Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the presence of a Banned Substance in a Horse's sample is two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 40.** In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has

been established by the FEI, the PR and APR have the burden of proving that they bear “*No Fault or Negligence*” for the rule violation pursuant to Article 10.4 of the EAD Rules, or “*No Significant Fault or Negligence*” pursuant to Article 10.5 of the EAD Rules.

41. In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR and APR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse’s system.
42. As confirmed by various CAS panels as well as FEI Tribunals, the PR and APR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. The PR submitted various statements without any validated evidence. Although the PR tried to explain how the Prohibited Substances entered the Horse’s system i.e., the Flunixin and the FEI have accepted this may be the possible reason, there is no causal link between the treatment of the yard/stable area with pesticides and the positive finding for Arsenic. Given the lack of evidence, the PR’s theory that the Arsenic in the Horse’s system was due to pest control treatment at the premises is no more than speculation. As a result, the Tribunal finds that the PR has not established – on a balance of probability – how the Banned Substance of Arsenic entered the Horse’s system.
43. 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 and APR’s degree of fault. The Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EAD Rules is warranted in this case.
44. The Tribunal further agrees with the FEI arguments as set out in paragraphs 5.13, 5.14 and 5.15 of their Response submitted to the Tribunal on 25 March 2021.
45. The Tribunal further agrees with the FEI’s recommendation for the fine and costs.

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

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



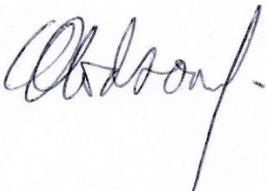
## **IX. Sanctions**

- 47.** In summary, the Tribunal imposes the following sanctions on the PR and APR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- a. upholds the charge that the PR and APR violated Article 2.1 of the EAD Rules;
  - b. disqualifies the result of the PR and Horse combination obtained in the Competition and 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;
  - c. imposes a period of Ineligibility of two (2) years on the PR and APR. The period of the Provisional Suspension, effective from 2 December 2019 is credited against the period of Ineligibility imposed in this decision. Therefore, the PR and APR will be ineligible until the 1 December 2021;
  - d. the PR and APR are each fined in the amount of **seven thousand five hundred Swiss Francs (CHF 7,500) each**; and
  - e. the PR and APR will each contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- 48.** No PR and APR 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 EAD Rules).
- 49.** Where a Person Responsible who has been declared Ineligible violates the conditions in section 49 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 (Article 10.11.3 of the EAD Rules).
- 50.** This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging

an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

- 51.** This Decision shall be notified to the PR, APR and to the NF of the PR/APR, and to the FEI.
- 52.** This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

**FOR THE FEI TRIBUNAL**

A handwritten signature in black ink, appearing to read "Hodson", is centered on the page. The signature is written in a cursive style with a long, sweeping tail on the final letter.

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**Mr Christopher Hodson, One-Member Panel**