

**DECISION of the FEI TRIBUNAL**

**dated 8 September 2021**

**(FEI Case number: Case 2020/BS12 GER ASHIR)**

**FEI Tribunal Hearing Panel:**

**Ms Valérie Horyna (SUI)**

---

**FEI Tribunal Reference:** C21-0022 FEI Case 2020/BS12 GER ASHIR - Mr. Odai ALQURASHI (PR)

**Horse/Passport:** GER ASHIR/103UH98/KSA

**Person Responsible/ID/NF:** Mr. Odai ALQURASHI/10203848/KSA

**Trainer :** Mr. Munair ALFAQEIH/10062545/KSA

**Event/ID:** CEI1\*100 - Riyadh (KSA), 2020\_CI\_0102\_E\_S\_01

**Date of Event:** 06-07.11.2020

**Prohibited Substance:** Diisopropylamine

**Bar Code Nos.:** 5586907

## **I. Factual background**

- 1.** Mr. Odai ALQURASHI, (FEI ID 10203848), the Person Responsible (**the PR**) is a rider for Saudi Arabia (**KSA**).
- 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, GER ASHIR (**the Horse**) at the CEI1\*100 - Riyadh (KSA), 2020\_CI\_0102\_E\_S\_01, in UAE on 6-7 November 2020 (**the Event**).
- 4.** Blood samples were collected from the Horse on 7 November 2020 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", collectively (**the Samples**) with reference number 5586907.
- 5.** The laboratory analysis of the A sample reported an adverse analytical finding for Diisopropylamine in the Sample, a "Prohibited Substance" under the FEI's Equine Anti-Doping and Controlled Medication Rules (**the EADCMRs**).
- 6.** Diisopropylamine, is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List.
- 7.** The positive finding of Diisopropylamine 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 2019 and came into force on 1 January 2020. 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>

---

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

## **II. Initial Proceedings**

- 8.** On 9 December 2020, the FEI Legal Department officially notified the PR through the National Federation of the Saudi Arabia **(the KSA-NF)**, of the presence of the Prohibited Substance in the sample collected at the Event in the Horse and the potential consequences **(the Notification Letter)** based on the Laboratory's adverse analytical finding of Diisopropylamine in the sample. In accordance with Article 7.4.1 of the Equine Anti-Doping Rules **(the EADRs)**, the Notification Letter also included notice that the PR was provisionally suspended from all competition until further notice from 9 December 2020 and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal **(the Tribunal)** pursuant to Article 7.4.4 of the EADRs. The Notification Letter also included notice that the Horse was provisionally suspended for 2 months from 9 December 2020 until 8 February 2021.
- 9.** In the Notification Letter of 9 December 2020, the PR was also informed of his right to request an analysis of the Horse's B sample in accordance with Article 7.1.4 (c) of the EADCMRs however the PR did not request same and by failing to issue this request the right was therefore waived.

## **III. Further Proceedings**

- 10.** By email dated 21 April 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel.
- 11.** On 14 May 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 19 May 2021. The PR was also granted the opportunity to respond to the FEI's allegations by submitting his respective position by 3 June 2021. The PR was 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 6 June 2021, failing which the right for an oral submission would be deemed as waived.
- 12.** On 14 May 2021, both the FEI and the KSA-NF informed the Tribunal that they did not have any objections to the constitution of the hearing panel.
- 13.** 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>, 2020, 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>, 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 Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, changes effective January 1<sup>st</sup>, 2020.

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

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.

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

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

- 14.** The FEI confirmed that no explanation was received from the PR in relation to this case. The FEI presented evidence of a reminder email sent to the PR on 4 March 2021, however despite such reminder issued no explanation to the Charge was submitted by the PR.

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

- 15.** In respect of the violation of the EADRs of the PR, the FEI noted Article 3.1 of the EADRs makes it the FEI's burden to establish all the elements of the EADR violation charged, to the comfortable satisfaction of the FEI Tribunal. Furthermore, the FEI stated that the elements of 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.

16. As such, the FEI confirmed that the results of the analysis of the A Sample taken from Horse at the Event confirmed the presence of Diisopropylamine and constituted sufficient proof of the violation of Article 2.1 of the EAD Rules.

### **Disqualification of results**

17. The FEI also submitted that in accordance with Article 9 of the EADRs which provides that an EADR 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 of the EAD Rules, e.g., on the basis of No (or No Significant) Fault or Negligence. Furthermore, the FEI stated 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 EAD Rules.

### **Presumption of fault:**

18. The FEI furthered that as a result of the presumption of fault pursuant to Article 10.2 of the EADR wherein it is provided that an PR with no previous doping offences who violates Article 2.1 of the EADRs is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault. In order to do this, the FEI noted that the rules specify that he/she must establish to the satisfaction of the Tribunal (it being his/her burden of proof, on the balance of probability<sup>2</sup>):
  - How the Prohibited Substance (here, Diisopropylamine entered into the horse's system; and
  - 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

---

<sup>2</sup> Art 3.1 EADR

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 Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EADRs); or

- That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced, depending on his degree of fault, pursuant to Article 10.5 of the EADRs).
- 19.** The FEI submitted that in respect of the 'threshold' requirement i.e., proving how Diisopropylamine entered into the Horse's system, the PR to date has not provided so far a substantiated explanation on how Diisopropylamine could have entered the body of the Horse.
  - 20.** The FEI further explained that due to the PR's inactiveness in providing any explanation for the circumstances which led to this Equine Anti-Doping Rule Violation the FEI cannot evaluate the PR's level of Fault, if any, and as such Articles 10.4 and Art. 10.5 of the EADRs cannot be applied. Consequently, no elimination or reduction of the period of Ineligibility in this case was possible.
  - 21.** The FEI outlined that the applicable Period of Ineligibility for a Banned Substance Rule Violation would therefore amount to 2 years.
  - 22.** In respect of the matter of fines and costs, the FEI referred to Article 10.2 of the EADRs which provided that a Person Responsible for an Article 2.1 violation should 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 that the PR is ordered to pay the legal costs that the FEI incurred pursuing this matter.
  - 23.** 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 taking into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc.
  - 24.** For a first time Banned Substance Rule Violation without any reduction of the Ineligibility period, as in present case, the proposed range for the fine

is between 7'500 -15'000 CHF with a contribution towards legal cost ranging between 2'000 – 7'500 CHF.

**25.** In summary and taking into account all the particulars presented in these proceedings, the FEI requested the following prayers for relief:

- (i) upholding the charge that the PR has violated Article 2.1 of the EADRs;
- (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 EADRs;
- (iii) imposing a period of Ineligibility two (2) years on the PR commencing on the date of the Final Decision, and crediting the Provisional Suspension already served as of 9 December 2020 (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.

## **VI. Jurisdiction**

**26.** 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 is a member of the KSA-NF, which is a member of the FEI, as such the PR is bound by the EADMCRs.

## **VII. The Decision**

**27.** As set forth in Article 2.1 of the EADRs, sufficient proof of an EADR violation is established by the presence of a Banned Substance in a Horse's Sample. The Tribunal is satisfied that the laboratory reports relating to the A sample in the Horse 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 the Banned Substance in the A sample taken from the Horse at the Event. The Tribunal also notes that the PR did not challenge the accuracy of the test results or the adverse analytical finding.

**28.** As a result, the Tribunal accept that FEI has established the adverse analytical



finding and has sufficiently proven the objective elements of the violation in accordance with Article 3 of the EADRs.

- 29.** Pursuant to Article 10.2.1 of the EADRs, 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 EADRs.
- 30.** In cases brought under the EADRs, a strict liability principle applies as described in Article 2.1.1 of the EADRs. Once an EADR violation has been established by the FEI, the PR has the burden of proving that they bear "*No Fault or Negligence*" for the rule violation pursuant to Article 10.4 of the EADRs, or "*No Significant Fault or Negligence*" pursuant to Article 10.5 of the EADRs.
- 31.** In order for Articles 10.4 and 10.5 of the EADRs to be applicable, the PR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
- 32.** 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. The PR submitted no Response to the Charges in these proceedings. As a result, the Tribunal finds that the PR has not established – on a balance of probability – how the Banned Substance of Diisopropylamine entered the system of the Horse.
- 33.** 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 EADRs is warranted in these proceedings.
- 34.** The Tribunal further agrees with the FEI's recommendation for the fine and costs.

#### **VIII. Sanctions**

- 35.** In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EADRs:
  - a. upholds the charge that the PR violated Article 2.1 of the EADRs;
  - b. imposes a period of Ineligibility of two (2) years on the PR. The period of the Provisional Suspension, effective from 9 December 2020 is

credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until the 8 December 2022;

- c. the PR is fined in the amount of **seven thousand five hundred Swiss Francs (CHF 7,500)**; and
  - d. the PR will contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- 36.** 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 EADRs).
- 37.** Where a Person Responsible who has been declared Ineligible violates the conditions in paragraph 36 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 EADRs).
- 38.** This Decision is subject to appeal in accordance with Article 12.2 of the EADRs. 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.
- 39.** This Decision shall be notified to the PR and to the NF of the PR, and to the FEI.
- 40.** This Decision shall be published in accordance with Article 13.3 of the EADRs.

**FOR THE FEI TRIBUNAL**



---

**Ms. Valérie Horyna (SUI), One-Member Panel**