

DECISION of the FEI TRIBUNAL

dated 28 October 2021

in the matter of

Mr Rafael Dinis ROCHA (PR)

Mr Pedro PINTO BRAVO (APR)

(FEI Case number: FEI 2021/BS01 – GISELLE III PARISOL)

FEI Tribunal Hearing Panel:

Ms Constance Popineau (FRA), one-member panel

FEI Tribunal Reference: C21-0046

Person Responsible/NF/ID: Rafael Dinis ROCHA/POR/10046681

Additional Person Responsible/NF/ID: Pedro PINTO BRAVO/POR/10091271

Horse/Passport: GISELLE III PARISOL/106PY18/POR

Event/ID: CSIO3* - Vilamoura (POR), 2020_CI_2024_S_S_01

Date of Events: 16-19.11.2020

Prohibited Substance: Nandrolone

Bar Code Nos.: 5591861

I. SUMMARY OF LEGAL AUTHORITY

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 Regulations, changes effective 1 January 2020 ("**EADCM Rules**").

FEI's Equine Anti-Doping and Controlled Medication Regulations, changes effective 1 January 2021 ("**2021 EADCM Rules**").

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

B. **Persons Responsible:** Mr Rafael Dinis ROCHA (PR) and Mr Pedro PINTO BRAVO (APR).

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 Special Procedure for Minors, 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 EAD 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.”

2021 EAD Rules Art. 10.8: “Where a *Person Responsible* and/or member of the *Support Personnel* and/or other *Person*, after being notified by the FEI of a potential EAD Rule violation that carries an asserted period of Ineligibility of two (2) years or more years (including any period of Ineligibility asserted under Article 10.4), admits the violation and accepts the asserted period of Ineligibility no later than twenty (20) days after receiving notice of an EAD Rule violation charge, the *Person Responsible* and/or member of the *Support Personnel* and/or other *Person* may receive a six (6) month reduction in the period of Ineligibility asserted by the FEI. Where the *Person Responsible* and/or member of the *Support Personnel* and/or other *Person* receives the six (6) month reduction in the asserted period of Ineligibility under this Article 10.8.1, no further reduction in the asserted period of Ineligibility shall be allowed under any other Article.”

2021 EAD Rules Art. 24.2.2: “Any EAD Rule violation case which is pending as of the Effective Date and any EAD Rule violation case brought after the Effective Date based on an EAD Rule violation which occurred prior to the Effective Date, shall be governed by the substantive EAD Rule in effect at the time the alleged EAD Rule violation occurred, and not by the substantive EAD Rule set out in these EAD Rules, unless the panel hearing the case determines the principle of “*lex mitior*” appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of

multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 16 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in these EAD Rules (provided, however, that Article 16 shall only be applied retroactively if the statute of limitation period has not already expired by the Effective Date)."

II. Factual background

1. Mr Rafael Dinis ROCHA (FEI ID: 106PY18), the Person Responsible ("**the PR**") and jumping rider from Portugal, competed with the Horse GISELLE III PARISOL ("**the Horse**") at the CSIO3* in Vilamoura (POR) between 16 and 19 November 2020 ("**the Event**").
2. Mr Pedro PINTO BRAVO (FEI ID: 10091271), the Additional Person Responsible ("**the APR**"), is a registered FEI Permitted Treating Veterinarian, which treated the Horse in the context of the Event. As he took a relevant decision about the Horse when he treated it with a Banned Substance, Mr Pedro PINTO BRAVO is considered as an Additional Person Responsible pursuant to Article 118.3 of the GRs.
3. The Fédération Equestre Internationale ("**the FEI**" together with the PRs and the 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 Horse was selected for testing on 19 November 2020, and returned a positive result for Nandrolone, which is a Banned Substance under the FEI's Equine Prohibited Substances List. Nandrolone is an anabolic steroid used in the treatment of catabolic diseases and to enhance muscle development.
5. The positive finding of Nandrolone in the Horse's sample gave rise to an Anti-Doping Rule Violation ("**the AD Rule Violation**").
6. By way of a notification letter dated 12 January 2021, the FEI informed the PR 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, based on the positive finding of Nandrolone in the Horse's sample collected at the Event.
7. The PR was provisionally suspended, as of 12 January 2021 in accordance with art. 7.4.1 of the FEI Equine Anti-Doping Rules ("**the EAD Rules**"). The Horse was also suspended for two months.

8. By way of a notification letter dated 9 March 2021, the FEI informed the APR 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, based on the positive finding of Nandrolone in the Horse's sample collected at the Event, as well as the APR's use of a Banned Substance on the Horse.
9. The APR was provisionally suspended by the FEI as of 9 March 2021, in accordance with art. 7.4.1 of the EAD Rules.
10. Following his provisional suspension, the PR promptly admitted, on 19 January 2021, the AD Rule Violation. The APR also admitted an AD Rule Violation on 19 January 2021, despite not having yet been notified of any AD Rule Violation by the FEI.
11. The PR and the APR submitted various documents in the context of the FEI proceedings, which will be summarized below.

III. Procedural background in front of the FEI Tribunal

12. By email dated 17 August 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 relation to the PR.
13. By email dated 3 September 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 relation to the APR.
14. On 23 September 2021, the Chair of the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve both cases. In this respect, the Chair of the Tribunal noted that the two cases were based on the same factual background and were therefore substantially similar, which justified, in the Tribunal's view, adjudicating them together, in application of Article 23.1 let. c of the IRs. The Parties were asked to provide any objections to the constitution of the hearing panel.
15. On 5 October 2021, the Tribunal informed the Parties of what seemed to be an incoherence in the files submitted. While the proceedings were opened against the APR on 9 March 2021 for a violation of Article 2.2 of the EAD Rules (*Use or Attempted Use of a Banned Substance or a Banned Method*), the Settlement Agreement submitted for approval to the Tribunal on 17 September 2021 referred to the admission, by the APR, of a 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*). Therefore,

the Parties were requested to clarify the above matter and/or, where applicable, to submit an adapted and updated Settlement Agreement for approval.

16. On 20 October 2021, the FEI submitted an updated Settlement Agreement, where the APR admitted the violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) and Article 2.2 (*Use or Attempted Use of a Banned Substance or a Banned Method*) of the EAD Rules. The APR was copied to the FEI correspondence.
17. Neither party requested an oral hearing.

A. Written Submissions by the PR and the APR:

18. The PR submitted his position on 19 January 2021. While accepting the results of the analysis of the sample collected from the Horse, the PR provided the following additional information.
 - a) *The mare Gisele III Parisol in June 2020 began to manifest lack of appetite and difficulty in performing exercises in training environment.*
 - b) *Concerned with this behaviour, I called the veterinarian, who diagnosed a gastric problem to my mare.*
 - c) *After confirmation of the diagnosis, she was medicated firstly with Omeoprazol, and in mid-August with Myodine, a substance that was administered as a last instance resource.*
 - d) *This last medication has in its composition the mentioned and banned substance – Nandrolone – that was found in the test performed on 19/11/2020.*
 - e) *At the time the treatment took place, the 2020 event calendar was not yet known and given the time elapsed, I believed that the medication used to solve my mare's health problem, had already been eliminated from the organism.*
 - f) *I regret for not having informed the official FEI onsite veterinarian that my mare, for health reasons, had been medicated with a banned substance.*
 - g) *I believe this was my biggest mistake!*
 - h) *The substance that was applied to my horse was, as I previously referred, only for health reasons and that reason only!*

- i) *It was never my intention to violate any FEI rules and regulations, using methods or illegal substances, which call in question the competition and the spirit of sports, but above all, the health and well-being of my mare.*
- j) *I am sorry for this situation – I have been a horseman and trainer for a long time and have never had any problem of such nature.*
- k) *Considering all the above reasons, as well as all my behaviour to date, I humbly request that any sentence to which I am sentenced to be suspended or, if that is not the understanding a court, that it be specially attenuated.*

19. In support of his position, the PR submitted a statement from the APR, as treating Veterinarian of the Horse, dated 17 January 2021. Said statement is addressed below, under par. 21.

20. The APR submitted two positions in the context of the FEI proceedings. The first one was submitted as a witness, in the context of the PR's position on 17 January 2021. The second position was submitted directly to the FEI on 29 March 2021, in response to the FEI's Notification Letter dated 9 March 2021.

21. On 17 January 2021, the APR submitted the following.

I, Pedro Pinto Bravo, Licensed Veterinarian number 2298, declare that during the month of July 2020, I consulted the mare named Gisele III Parisol, owned by Mr. Rafael Dinis Rocha, due to lack of appetite and inability to exercise.

After performing several diagnostic exams, it was possible to confirm that the cause was a gastric problem, un particular a gastric ulcer situation. The most specific treatment, which included Omeprazole, was immediately prescribed, for a period of eight weeks. About 4 weeks after starting the mentioned treatment (around mid-August 2020), the mare was also medicated with Myodine, whose active ingredient is Nandrolone, in order to aid its physical recovery.

22. On 29 March 2021, the APR answered to written questions which were sent to him by the FEI, and which are hereby summarized.

a) The APR is aware that the Horse competes from time to time and helped the rider to prepare for the competition.

b) As per the treatment with Nandrolone, the APR stated that "*Giselle was presenting*

some health problems, such as inability for exercise, diminish of appetite and considerable slimming, despite the normal diet. Therefore, we started sucralfate and omeprazole therapy. Since we were not planning to compete, unfortunately I also decided to medicate Giselle with Myodine®."

- c) The APR further admitted that he should have administered only sucralfate and omeprazole, even though Nandrolone can be considered as a legitimate treatment in severe catabolic situations, such as, e.g., severe slimming in consequence of inappropriate nutrition. On the other hand, the APR does not consider Nandrolone to be a legitimate treatment to enhance muscle development.
- d) The APR did not know, at the time, that Nandrolone was a Banned Substance, which is why he told the PR that the Horse could compete after having sufficiently rested. The APR also did not know that the administration of Nandrolone could be a criminal offense under certain jurisdictions.
- e) To check whether a substance is prohibited under the FEI rules, the APR usually consult the prohibited substance database on feicleansport.org. However, the APR admitted having failed to verify in this specific case, which resulted in a very unfortunate situation for him, the PR and the equestrian sport.
- f) The APR promptly admitted his fault and mistake and assumed his responsibility 100%.
- g) The APR advised the PR not to request the B-Sample analysis.
- h) The APR never had the intention to obtain an advantage by administering the Banned Substance to the Horse. The motive of the administration of the Banned Substance was purely therapeutic, since, in the APR's opinion, there was a catabolic situation.
- i) The APR has not been performing as an FEI treating veterinarian for the past 2-3 years, since his license expired, and he did not have the possibility, for both personal and professional reasons, to pass the relevant exam.
- j) In view of all the circumstances, the APR requests for a sanction as minimal as possible to be imposed on him and the PR, which, for this latter, is prevented to work due to the APR's unintentional mistake. The APR feels to be already sanctioned by the situation, and the public knowledge of it, being by other riders, breeders, vets and friends.

B. The Submission of the FEI:

23. On 17 August 2021, the FEI provided the Tribunal with the Settlement Agreement reached with the PR, which contains accordingly the FEI's position in relation to the PR. Similarly, on 3 September 2021, the FEI provided the Tribunal with the Settlement Agreement reached with the APR, which contains accordingly the FEI's position in relation to the APR. The FEI's position, which is substantially the same for both cases, is summarised below.
- a) The FEI Veterinary Department analysed the explanations provided by the PR and the APR, and concluded that the administration of the Myodine containing Nandrolone could indeed account for the full finding of the Banned Substance in the Horse, in particular considering that the withdrawal time for certain anabolic steroids, such as Nandrolone, can last for several months.
 - b) Taking into consideration the PR and the APR's explanations, the FEI is of the opinion that the PR and the APR established, on a balance of probabilities, how the prohibited substance Nandrolone entered the Horse's system.
 - c) Under the EAD Rules applicable from 1 January 2021, the PR (and the APR) can accept a six (6) months reduction if they promptly admit the violation and accept the consequences in accordance with Art. 10.8.1 of the 2021 EAD Rules. The FEI therefore offered such reduction also for this case, in application of the *lex mitior* principle, in accordance with Art. 24.2.2 of the 2021 EAD Rules.
 - d) Furthermore, the FEI appreciated the PR's and the APR's honesty and will to fully cooperate with the investigation, as well as the prompt admission of the AD Rule Violation, which took place only 7 days after its notification to the PR in January 2021.

IV. The Decision

24. Agreement between the PR and the FEI:

Quote

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

3.1 Article 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval.

3.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse GISELLE III PARISOL, at the CSIO3* in Vilamoura, in Portugal, between 16 and 19 November 2020, the PR, Mr. Rafael Dinis Rocha 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 Nandrolone entered the Horse's system;

(c) The PR has accepted a six (6) months reduction and the consequences of such reduction;

(d) The period of Ineligibility imposed on the PR shall be eighteen (18) months, starting on the date of notification i.e. 12 January 2021 and ending on 11 July 2022;

(e) The Provisional Suspension imposed on the PR on 12 January 2021, 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 [recte: Article 10.8] (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) The PR shall incur a fine of 5 000 CHF;

(i) Each party will bear its own legal and other costs incurred in connection with these proceedings;

3.3 The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

3.4 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI.

3.5 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.

3.6 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***

25. Agreement between the APR and the FEI:

Quote

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

3.1 Article 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval.

- 3.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the Horse GISELLE III PARISOL, at the CSIO3* in Vilamoura, in Portugal, between 16 and 19 November 2020, and Mr. Pedro Pinto Bravo's use of the Banned Substance Nandrolone on the Horse, the APR and the FEI agree in accordance with 7.6.1 EAD Rules on the following:
- (a) The APR admits the violation of Article 2.1 and 2.2 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample and the Use of a Banned Substance and/or its Metabolites or Markers*);
 - (b) The APR established on a balance of probabilities how Nandrolone entered the Horse's system;
 - (c) The APR has accepted a six (6) months reduction and the consequences of such reduction;
 - (d) The period of Ineligibility imposed on the APR shall be eighteen (18) months, starting on the date of notification i.e. 9 March 2021 and ending on 8 September 2022;
 - (e) The Provisional Suspension imposed on the APR on 9 March 2021, 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 [recte: Article 10.8] (Multiple Violations) of the EAD Rules;
 - (g) The APR shall incur a fine of 5 000 CHF;
 - (h) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- 3.3 The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.
- 3.4 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI.

- 3.5 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
- 3.6 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***

V. Jurisdiction

26. 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 and the APR are both members of the Federação Equestre Portuguesa, and as such are 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.

VI. Approval of Agreement

27. 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 1, the PR 2 and the APR established (i) how the Banned Substance entered the Horse's system and (ii) that they bear No Fault or Negligence for this first anti-doping rule violation.
28. Furthermore, the Tribunal also takes note that the FEI is satisfied that the PR and the APR provided credible explanations as to how the Banned Substance entered the Horse's system, explanations which were validated by the FEI Veterinary Department. Furthermore, the Tribunal notes that the FEI considers, in view of the particularly prompt AD Rule admission, as well as the PR's and APR's honesty and willingness to cooperate with the investigation, that Art. 10.8.1 of the 2021 EAD Rules should be applied to the PR and the APR, in application of the *lex mitior* principle.

29. The Tribunal wishes to emphasise that it did not evaluate whether the PR and the APR have 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.
30. 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.
31. 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 2021/BS01 GISELLE III PARISOL, C21-0046 ROCHA & Pinto BRAVO.

VII. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the PR Mr Rafael Dinis ROCHA concerning the case 2021/BS01 GISELLE III PARISOL (C21-0046 ROCHA & PINTO BRAVO) is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph IV above are incorporated into this Decision.
2. The Tribunal rules that the Agreement reached between the FEI and the APR Mr Pedro PINTO BRAVO concerning the case 2021/BS01 GISELLE III PARISOL (C21-0046 ROCHA & PINTO BRAVO) is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph IV above are incorporated into this Decision.
3. 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.
4. This Decision shall be published in accordance with Article 13.3 of the EADCM Rules.

VIII. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the PR and the APR: Yes
- c. Any other: No

FOR THE TRIBUNAL



Ms Constance Popineau, One-Member Panel