

DECISION of the FEI TRIBUNAL

dated 3 November 2021

in the matter of

Ms Andrea ALVARADO (C21-0056)

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

FEI Tribunal Hearing Panel:

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

FEI Tribunal Reference: C21-0056 [2020/BS07]

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

Additional Person Responsible/ID/NF : Andrea ALVARADO / 10114776 / 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. 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 Rules, 2nd edition, changes effective 1 January 2020 (“**EAD Rules**”).

FEI’s Equine Anti-Doping and Controlled Medication Regulations, changes effective 1 January 2021 (“**2021 EAD Rules**”).

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

B. Person Responsible: Mr Joaquin ALBISU.

C. Additional Person Responsible: Ms Andrea ALVARADO.

D. 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.”

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 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. Ms Andrea ALVARADO (FEI ID 10114776) is the registered Owner of the Horse and is an Additional Person Responsible (“**the APR**”) in the meaning of Article 118.3 of the GRs.
3. The Fédération Equestre Internationale (“**the FEI**” together with 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. 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.
5. The positive finding of Boldenone, Boldienone and Boldenone Undecylenate in the Horse’s sample gave rise to an Anti-Doping Rule Violation.
6. On 13 October 2020, the FEI Legal Department officially notified the APR and the Argentinian Equestrian Federation (“**ARG-NF**”), of a 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 and/or its Metabolites or Markers*) of the FEI Equine Anti-Doping Rules (the “**EAD Rules**”), 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**”). The FEI did not suspend provisionally the APR.

7. On 1 April 2020, the APR submitted spontaneously her position, admitting the Rule Violation, in the context of the proceedings opened against the PR on 26 March 2020. The APR's position will be addressed *infra*, under IV.

III. Procedural background in front of the FEI Tribunal

8. By email dated 25 October 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.
9. On 28 October 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 28 October 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
11. Neither party requested an oral hearing.

IV. The Parties' Submissions

A. The Submissions of the APR:

12. The APR submitted her position on 1 April 2020, by way of an affidavit provided in the context of the FEI proceedings opened against the PR. Following the Notification Letter, the APR exchanged various emails with the FEI, in connection with her personal situation and her involvement in the present matter. Those various positions are summarised below.
13. On 1 April 2020, the APR indicated the following:

"I declare I had performed myself an anemia treatment of 8 weeks duration in the horse owned by me, EASY BOY 23 FEI passport Number 105AF89 by weekly injecting 2 ml of anemia medicine called ANABLDE, Boldenone Undecylate, classified as anabolic steroid, starting in December 4 2019 and finishing February 2 2020. I bought this drug at the store called VETERINARIA EL JOCKEY prescribed from my veterinarian Eduardo Saravia. My only intention with this treatment was the well being of the horse and quick recover to sportive season. I wrongly presumed that by withdrawing the treatment one week prior the event I would create no harm for a fair play on the standards of the competition. I

also declare for commercial purpose that I never disclosed this treatment with the Rider of the Horse Joaquin Albisu".

14. The APR has always been willing to cooperate fully with the FEI, and promptly admitted the Rule Violation.
15. The APR confirmed being the Owner of the Horse, which she had purchased with the aim of participating to the Tokyo Olympics. The Horse would have been ridden by the PR, since the APR would not necessarily have the capacities to qualify herself. The APR indicated having a close relationship with the PR. The APR did however initially compete with the Horse, including at the National Grand Prix in the USA.
16. The APR understands that her actions were wrong. She started the anemia treatment performed on the Horse before the Horse was stabled, and the PR was not aware, nor the Stables, of the treatment performed.
17. The APR came to the USA before the Covid lock-down, with a tourist visa to train and compete. Due to the closing of the borders, the APR could not return to Argentina, but was not allowed to have a paid job in the USA. She therefore has no sources of income. She had to donate the Horse since she could not find any buyer for it.

B. The Submission of the FEI:

18. On 25 October 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.
19. Based on the PR's and the APR'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."

20. In the expert's opinion, the administration of Anabolde can therefore account for the full finding of the Prohibited Substances at hand.
21. The substances were administered via intramuscular injection. The withdrawal time for certain anabolic steroids such as Boldenone can be up to several months.
22. Therefore, the explanation provided by the APR is scientifically plausible and the APR has established how Boldenone, Boldienone and Boldenone Undecylenate entered the Horse's system.
23. Under the EAD Rules applicable as of 1 January 2021, the APR can accept a six (6) months reduction if he promptly admits the violation and accepts the consequences, in accordance with Article 10.8.1 of the 2021 EAD Rules. The FEI therefore offered – and the APR accepted – such reduction for the present matter, in application of the "*lex mitior*" principle pursuant to Article 24.2.2 of the 2021 EAD Rules.
24. The above agreement also took into account, on the FEI's side, the APR's honesty and will to fully cooperate with the FEI, as well as the APR's prompt admission of the EAD Rule Violation, only five days after the Notification Letter sent out to the PR.
25. All in all, the Ineligibility Period to be imposed on the APR shall be eighteen (18) months, and a fine, amounting to 5'000 CHF, shall be imposed on the APR. This takes also into account the fact that the APR has been honest, fully cooperated with the FEI and promptly admitted the violation, only 5 days after notification to the PR, and even prior to the notification of her own case.

V. The Decision

26. Agreement between the Parties:

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 EASY BOY 23 at the CSIO4* - Wellington FL, in the USA, between 25 February and 1 March 2020, and Ms. Andrea Alvarado's Use of the Banned Substance Boldenone Undecylenate 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 (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules;
 - (b) The APR established on a balance of probabilities how Boldenone, Boldienone and Boldenone Undecylenate 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 the Decision;
 - (e) 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;
 - (f) The APR shall incur a fine of 5 000 CHF;
 - (g) 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***

VI. Jurisdiction

27. 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 APR 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.

VII. Approval of Agreement

28. 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.
29. Furthermore, the Tribunal also takes note that the FEI is satisfied that the sanction of eighteen (18) 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 APR, and analysed the scientific explanations brought by the APR, comparing it with the scientific analysis provided by their external scientific expert.
30. Moreover, the Tribunal notes that the FEI considers, in view of the particularly prompt

AD Rule admission, as well as the 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 APR, in application of the lex mitior principle.

31. The Tribunal wishes to emphasise that it did not evaluate whether the APR 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.
32. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EAD Rules.
33. 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 C21-0056 ALVARADO [2020/BS07 EASY BOY 23].

VIII. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the APR, Ms Andrea ALVARADO concerning the case C21-0056 ALVARADO [2020/BS07 EASY BOY 23] is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph V 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 published in accordance with Article 13.3 of the EADCM Rules.

IX. DECISION TO BE FORWARDED TO:

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

FOR THE TRIBUNAL

A handwritten signature in blue ink, consisting of a large, stylized 'S' or 'M' shape with a horizontal line extending to the right and a vertical line extending downwards from the end of the horizontal line.

Mr Mohammed Al-Saberi, One-Member Panel