

DECISION of the FEI TRIBUNAL

dated 1 September 2022

CASE NUMBER: C22-0030

MR AGUSTIN COVARRUBIAS (PR)

FEI Tribunal Hearing Panel:

Mr. José A. Rodríguez Álvarez

FEI Tribunal Reference: C22-0030

Case 1: 2022/BS05

Person Responsible/ID/NF: Agustin COVARRUBIAS/10032966/CHI

Horse/Passport: **FULL OPTION DU BORGET/106UY09/NED**

Event/ID:2022_CI_1043_S_YH_01

Event Date: CSYH1* incl. 8yo - Opglabbeek (BEL), 15-18.06.2022

Prohibited Substance(s): O-Desmethylvenlafaxine

Bar Code No.: 5613030

I. Introduction

- 1.** This Settlement Agreement pertains to FEI Case 2022/BS05 FULL OPTION DU BORGET. In respect of this case, the FEI notified Mr Agustin Covarrubias that a violation of Article 2.1 of the Equine Anti-Doping Rules contained in the Equine Anti-Doping and Controlled Medication Regulations - the Presence of a Prohibited Substance and/or its Metabolites or Markers in a Horse's Sample - had occurred. The FEI notified Mr Covarrubias of the respective charges in his capacity as the Person Responsible (the PR) for the case entitled 2022/BS05 FULL OPTION DU BORGET.

2. Applicable Rule Provisions:

- Statutes 24th edition, effective 17 November 2021 ("Statutes").
- General Regulations, 24th edition, 1 January 2020, updates effective 1 January 2022. ("GRs").
- Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("IRs").
- FEI Equine Anti-Doping and Controlled Medication Regulations, 3rd edition, effective 1 January 2021 ("EADCMRs").¹ As only the FEI Equine Anti-Doping Rules ("EADR") apply in the present case, reference will be made hereinafter only to this first chapter of the EADCMRs.

II. Factual background

- 3.** Mr Agustin Covarrubias (FEI ID 10032966) is the PR in accordance with Article 118.3 of the FEI General Regulations, and he is a rider in the discipline of Jumping for Chile.
- 4.** The Fédération Equestre Internationale (the FEI), 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, Para-Equestrian).
- 5.** The PR and the FEI will be jointly referred to as the Parties where applicable.
- 6.** The PR participated with the horse FULL OPTION DU BORGET. (FEI ID: 106UY09) (the Horse) in CSIYH1* incl. 8yo - Opglabbeek (BEL), 15-18.06.2022 (the Event). The PR is a member of the Chilean Equestrian Federation (the CHI-NF), the latter being a member of the FEI, thus the PR was bound by the EADR.
- 7.** The Horse was selected for Sample Collection on 18 June 2022. Urine and blood samples were collected from the Horse and sent for analysis to the FEI approved Racing Laboratory, the LGC, Newmarket Road, Fordham, Cambridgeshire, UK (the Laboratory).
- 8.** The analysis of the urine samples revealed the presence of O-Desmethylvenlafaxine, a metabolite of Venlafaxine, which is a

¹ FEI Equine Anti-Doping and Controlled Medication Regulations 3rd edition, effective 1 January 2021.

serotonin and norepinephrine inhibitor used as anti-depressant. It is classified as a Banned Substance under the 2022 FEI Equine Prohibited Substances List.

- 9.** The positive finding of O-Desmethylvenlafaxine in the Horse's Sample gives rise to an Equine Anti-Doping Rule Violation (Rule Violation) under Article 2.1 of the EADR.
- 10.** By notification letter dated 25 July 2022 (the Notification Letter), the FEI informed the PR along with the CHI-NF of a violation of Articles 2.1 and/or 2.2 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample and/or the Use of a Banned Substance and/or Banned Method) of the EADR based on the Laboratory's adverse analytical finding (the AAF) of O-Desmethylvenlafaxine in the Horse's Sample collected at the Event.
- 11.** In accordance with Article 7.4.1 of the EADR, the PR was provisionally suspended as of the date of notification of the violation on 25 July 2022. On the same day, the Horse was provisionally suspended for two (2) months until 24 September 2022.
- 12.** In the Notification Letter, the PR was informed of his right to request the Horse's B Sample to be analysed. The PR did not ask for the B Sample to be analysed and in accordance with Article 7.1.4 of the EADR such analysis is deemed irrevocably waived.
- 13.** The FEI also informed the PR via the Notification Letter of his right to provide an explanation. The PR submitted his explanation on 25 July 2022 and explained that the AAF in the Horse was due to human cross-contamination. Following the receipt of the PR's explanations, the FEI considered the overall particulars of the case and concluded that the actions described by the PR led to the AAF in the Horse and consequently, enabled the FEI to enter into the present Settlement Agreement.

III. Procedural background in front of the FEI Tribunal

- 14.** By email dated 10 August 2022, the FEI submitted to the Tribunal the Settlement Agreement in accordance with Article 10.8.2 of the EADR signed by all Parties on 8 and 10 August 2022. The FEI also requested the urgent lifting of the Provisional Suspension imposed upon the PR as it had concluded that he bore No Fault or Negligence for the Rule Violation and as such the ineligibility period shall be eliminated.

² FEI Settlement Agreement- Exhibit 6, PR's letter to the FEI.

15. On 12 August 2022, the Parties were informed of the nominated Hearing Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel by 17 August 2022.
16. On 12 August 2022, the FEI and the PR confirmed they had no objections to the composition of the Hearing Panel.

IV. The Parties' Submissions: PR

17. Following the FEI's Notification Letter of 25 July 2022, the PR provided his written submissions on the 25 July 2022, wherein he explained how the Prohibited Substance entered the Horse's system. In short, the PR explained that he was prescribed Venlafaxine by his doctor in May 2022 to treat his medical condition. In order to confirm that his statement was true, the PR provided a doctor's certificate which included the following: the medical diagnosis for which the medications were prescribed, names and dosages of the prescribed medications, the date of the beginning of the treatment, duration and a follow up of the treatment. The PR also sent photographs of the medication he was taking to the FEI as evidence³.
18. The PR further admitted that during the Event he urinated several times in the Horse's box hence the most probable source of the Prohibited Substance in the Horse was the ingestion by the Horse of the hay contaminated with the metabolite of Venlafaxine by his urination. The PR also admitted that he often urinated in the stables during competition but also while at his home stables since the bathroom is far from the stables and it takes up too much time for him to walk to the bathroom.
19. The PR confirmed that until the receipt of the Notification Letter, the PR was not aware that his actions would cause human cross-contamination and an AAF in the horse. The PR confirmed that if he had known of this risk, he would have never urinated next to the Horse. Furthermore, the PR admitted he had learnt his lesson and would not urinate in the horses' stalls again. He would also warn his friends and entourage about the potential adverse consequences of urination in the stables.

³ FEI Settlement Agreement Exhibit 6

V. The Parties' Submissions: FEI

- 20.** The FEI stated that in order to verify the veracity of the explanations provided, they requested for their external scientific expert to advise whether the concentration of the Prohibited Substance detected in the Horse's Sample was scientifically plausible. The FEI also requested for their expert to consider whether the ingestion of the contaminated hay would lead to this AAF in the Horse. The FEI scientific expert confirmed that those explanations were scientifically plausible⁴.
- 21.** Therefore, the FEI deemed that the explanation provided as to the source of the Banned Substance was very likely to account for the AAF present in the Horse. Consequently, the FEI was satisfied that the PR had clearly established on a balance of probabilities, how the Banned Substance 0- Desmethylvenlafaxine entered the Horse's system.

Fault and Negligence for the rule violation

- 22.** In evaluating the PR's level of fault or negligence, if any, for the Rule Violation under Article 2.1 of the EADR, the FEI took into account the following considerations which the PR had explained in his submissions, and these can be summarised as follows:
- That the PR submitted his written explanations on 25 July 2022, the same day as the Notification Letter. The PR and his entourage were very pro-active throughout the entire process and his overall attitude throughout this case was exceptional and exemplary according to the FEI;
 - That the present matter was not the one where the Prohibited Substance was directly administered to the Horse, whether intentionally or by mistake, by the PR or his Support Personnel nor did it enter the Horse's body through a mislabelled or contaminated supplement;
 - That it was a rare case where a possibility of cross-contamination was difficult to foresee by an average person not dealing with anti-doping cases on a daily basis as such person would need to be aware that if he/she was on medication and he/she urinated in the horse's environment, the metabolites of that medication would be present in his/her urine and may result in contaminating the hay or grass in the horse's proximity which thereafter may run the risk of being potentially ingested by the

⁴ FEI Settlement Agreement Exhibit 7

horse, metabolised by the horse's system and return a positive sample for that metabolite by the horse. The FEI stated that a cause-and-effect sequence was quite distant in this case and not easily perceived by an average and reasonable athlete;

- That although it was not the first case where a Prohibited Substance entered the body of the horse through ingestion of the hay contaminated by urination metabolites, the FEI did not expect athletes to be acquainted with every single anti-doping decision issued by the FEI Tribunal in order to make themselves fully aware with all the possible and most exceptional doping cases and held them accountable to such a high standard;
- Furthermore, the FEI noted that, as correctly pointed out by the FEI Tribunal in the decision dated 26 August 2020 issued in the Case 2019/BS41 GELO DELLE SCHIAVE:

"9.14 The Tribunal is however concerned regarding the number of reoccurring cases where urinating in the horses' boxes led to cross contamination of those horses. In the view of the Tribunal those are clearly cases which could easily be avoided if all stakeholders in equestrian sport were properly educated about the risks of this kind of contamination. The Tribunal therefore strongly encourages the FEI, as well as those expected to educate others, for example riders that are supposed to educate their Support Personnel, to re-enforce their information and education duties."

- The FEI also explained that it is planning to conduct an educational campaign in the near future (the project is currently underway) as the FEI has been made aware that urination in the stables in close proximity to the horses was a common problem in the equestrian sport and regrettably the stakeholders are completely unaware of the potential risks of AAF's through cross-contamination of such actions;
- Therefore, the FEI finds that it would be unfair to treat the present matter in a different way than other of the cross-contamination cases to date.⁵ The FEI also highlighted that the PR has become very vocal among his friends and equestrian entourage in raising awareness about the possible consequences of urinating in a horses' stable;

⁵ See for example decisions issued by the FEI Tribunal in the following cases: Case 2019/BS25 S H CIRO, Case 2019/BS41 GELO DELLE SCHIAVE, Case 2019/FT42 QUELLY BRIQUEDALLE, Case 2021/BS10 SPOOTNICK DAVRIL.

- Finally, the FEI submitted that although this was not the first Rule Violation by the PR, it should be noted that the PR was not involved in the administration of the Prohibited Substance to the horse in Case 2021/CM09 D. Instead, it was the entourage of the owner. Nevertheless, the PR did not challenge the violation at that time: he admitted the violation and accepted his responsibility in his position as PR as well as the sanction.
- 23.** For the reasons stated above, the FEI concluded that the PR has established that he bore No Fault or Negligence for the present Rule Violation and that therefore the period of ineligibility should be eliminated in accordance with the Article 10.5 of the EADR.
- 24.** In accordance with the Articles 9.1 and 10.1.2 of the EADR, the FEI submitted that all 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, regardless of the level of fault. Finally, as the case has resulted in a Settlement Agreement the FEI does not seek any contribution to the legal costs.

VI. The Agreement between the Parties

- 25.** The Parties reached the following Agreement:

Quote

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

Article 10.8.2 of the EADR permits for an agreement between the parties, subject to the FEI Tribunal's approval.

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse FULL OPTION DU BORGET at the CSYH1* incl. 8yo – Opglabbeek, Belgium, between 15 to 18 June 2022, the PR and the FEI agree in accordance with the Article 10.8.2 of the EADR on the following:

- a) The PR admits the violation of Article 2.1 EADR (The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample);
- b) The PR established on a balance of probabilities how O-Desmethylvenlafaxine entered the Horse's system;

- c) The PR has established that he bore No Fault or Negligence for the rule violation in accordance with the Article 10.5 EADR;
- d) The period of Ineligibility imposed on the PR shall therefore be eliminated;
- e) 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, in accordance with the Articles 9.1 and 10.1.2 of the EADR;
- f) The PR's Horse shall remain Provisionally Suspended for the period of two (2) months (until 24 September 2022);
- g) The PR shall not incur any fine;
- h) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- i) No other Sanctions will apply in this case;
- j) In accordance with Article 10.9.2 of the EADR, this violation of the EADR shall not be considered a prior violation for the purpose of Article 10.9 (Multiple Violations) of the EADR.

This agreement is made in accordance with Article 10.8.2 of the EADR and is subject to the approval of the FEI Tribunal. The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

In accordance with the Article 10.8.2 of the EADR, the Decision by the FEI to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of, the period of Ineligibility and the confirmation of the case resolution agreement by the FEI Tribunal are not subject to appeal under Article 13 of the EADR.

The parties acknowledge and agree that pursuant to Article 14.3 of the EADR, the Decision will be made public by the FEI.

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.

*** End Quote***

VII. Approval of Agreement

- 26.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the Parties agree the PR has established, on a balance of probability, how O-Desmethylvenlafaxine entered the Horse's system and consequently this was the reason it was present in the Sample taken from the Horse.
- 27.** The Tribunal acknowledges that the PR and the FEI have agreed on terms for the closure of proceedings in accordance with Article 10.8.2 of EADR as detailed at section VI of this Decision.
- 28.** The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding the source of the Prohibited Substance, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law.
- 29.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADR.
- 30.** 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 2022/BS05- FULL OPTION DU BORGET.

VIII. The Tribunal's Decision

- 31.** The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Agustin Covarrubias, concerning the case 2022/BS05- FULL OPTION DU BORGET is hereby ratified by the Tribunal with the consent of the Parties, and in the terms set out in Section VI above, which are incorporated into this Decision.
- 32.** The Tribunal also rules that the Provisional Suspension imposed on Mr Agustin Covarrubias is lifted with immediate effect, as of notification of this Decision.

- 33.** The Tribunal also wishes to highlight that despite the FEI's Clean Sport communications issued to stakeholders circa August 2020 to minimise and mitigate the possibility of contamination that may lead to positive Equine Anti-Doping and Controlled Medication test results, such cases are arising frequently. In this respect, the Tribunal strongly requests that greater awareness is raised to ensure that best practice guidelines as detailed in the Clean Sport communications are followed. The continued existence of careless cross contamination AAFs may result in future cases being subject to a more stringent review going forward by the Tribunal.
- 34.** This Decision is not subject to appeal under Article 13 EADR in accordance with Article 10.8.2 EADR.
- 35.** This Decision shall be notified to the PR, to the Secretary General of the CHI-NF of the PR, and to the FEI.
- 36.** This Decision shall be published in accordance with Article 14.3 of the EADR.

IX. Decision to be forwarded to:

- a. The Parties: Yes**
b. The Secretary General of the NF of the person sanctioned: Yes
c. Any other: No

FOR THE FEI TRIBUNAL

A handwritten signature in black ink, appearing to be 'J. A. Rodríguez', written over a horizontal line.

Mr. José A. Rodríguez Álvarez (MEX), One-Member Panel