



DECISION of the FEI TRIBUNAL

dated 22 November 2010

Positive Medication Case No.: 2009/28

Horse: FREDDIE'S STAR

FEI Passport No: ITA 41550

Person Responsible: Alberto Basilico

Event: CIC3* Cameri, ITA

Prohibited Substance: Fluphenazine

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo
Mr. Erik Elstad
Mr. Patrick Boelens

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR):
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: None

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 22nd edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1st edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11th edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List")

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Alberto Basilico

3.3 Justification for sanction:

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

4. DECISION

4.1 Factual Background

1. FREDDIE'S STAR (the "Horse") participated at the CIC3* Cameri, in Italy, from 23 to 25 October 2009 (the "Event"), in the discipline of Eventing. The Horse was ridden by Mr. Alberto Basilico, who is the Person Responsible in accordance with GRs Art. 118 (the "PR").
2. The Horse was selected for sampling on 25 October 2009.
3. Analysis of the blood sample no. FEI-5500440 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory, Sport Science Laboratory ("HFL"), by Mr. Ruth Schiller, Senior Scientist, under the supervision of Mr. Steve Maynard, Laboratory Director. The analysis revealed the presence of Fluphenazine (Certificate of Analysis no 57332 dated 20 November 2009).
4. Fluphenazine is an antipsychotic, leading to behavioural modification of humans, with a calming and behavioural effect on the horse. Fluphenazine is a "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"),

in the class of "Doping". Therefore, the presence of Fluphenazine in the Horse's sample constitutes an *Anti-Doping* rule violation.

5. No request had been made to administer Fluphenazine to the Horse, and no medication form had been submitted for this substance.

4.2 The Proceedings

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 26 November 2009.
7. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

9. Together with the Notification Letter of 26 November 2009, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR confirmed on 27 November 2009 that he wished for the B-Sample analysis to be performed.
11. The B-Sample analysis was performed on blood on 21 December 2009 at the HFL by Ms. Selina Hines, Senior Scientist, under the supervision of Mr. Steve Maynard.
12. The PR did not attend the opening and identification of the B-Sample but sent Dr. Oscar Ghizzoni, Chemist and Technical consultant, as his representative to the Laboratory, who witnessed the opening and identification of B-Sample no. 05500440.
13. In his witness statement, Dr. Ghizzoni certified that the sealed "B" Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the sample to be tested by the HFL Sport Science corresponds to that appearing on the collection documentation accompanying the sample*" (Witness Statement dated 21 December 2009).
14. Dr. Ghizzoni further issued a separate statement with respect to the B-Sample analysis, challenging, in a nutshell, the fact that as

witness, he was not allowed to attend the entire B-Sample analysis procedure but only the opening and identification of the sample. This statement was also signed by Mr. Steve Maynard (Statement dated 21 December 2009).

15. The B-Sample analysis of the blood confirmed the presence of Fluphenazine (Certificate of Analysis no 57952 dated 22 December 2009).
16. The results of the B-Sample analysis were notified to the PR on 13 January 2010, through the Italian Equestrian Federation (ITA).

4.4 The Further Proceedings – Request to lift Provisional Suspension

17. On 28 January 2010, the PR submitted his written explanations, through his Legal Counsel, Mr. Andrea Pini. Together with his explanations, the PR submitted an Expert Report by Dr. Oscar Ghizzoni dated 16 January 2010, a statement by himself dated 20 January 2010 as well as a statement by Dr. Gabriele Schmitz, treating veterinarian, and a completed FEI Questionnaire. The PR further submitted documents, all of which have been considered in detail by the Panel and the most important ones of which shall be detailed below.
18. With respect to the B-Sample analysis, the PR stated that his representative, Dr. Ghizzoni, should have been permitted to attend the entire procedure of the B-Sample analysis. In order to justify this request, the PR referred to the FEI Anti-Doping Rules, effective April 2010 (which do not apply to the present case as the Event was held prior to such rules coming into effect), as well as to Italian laws and to regulations of other international sport federations. The PR further explained that in Italy in anti-doping cases, mandatory penal proceedings were opened as a standard procedure, since under Italian law anti-doping cases were also prosecuted as cases of animal mistreatment and sporting fraud. That accordingly, a procedure under Italian law had been opened against him as well, and that the non-admission of his representative during the entire B-Sample analysis would result in a substantial harm to him and to his constitutional defence rights in the penal proceedings.
19. In his Expert Report, Dr. Ghizzoni contended that, whereas no indications as to the quantity of Fluphenazine detected were given, it could be deduced from the analytical data that the quantity was below the reference standard. That, due to the non-admission of the PR or his representative during the entire analysis process, it was impossible to validly confirm the analysis. Finally Dr. Ghizzoni

argued that the detected quantities of Fluphenazine were insufficient to have any effect on the Horse.

20. Dr. Schmitz, in her statement, reported that she had repeatedly performed acupuncture sessions on the Horse during 2009, for relaxation purposes and "as prevention for a manifested suffering of the heels of the front feet".
21. Based on the above arguments of the allegedly flawed procedure of the B-Sample analysis, the PR requested to lift the Provisional Suspension.
22. Following request by the FEI, on 12 February 2010, the PR submitted his answers to the FEI Questionnaire. He reported that the Horse suffered from allergy problems and was therefore treated by injections every 4 (four) weeks, not specifying the substance used, but that he did not administer any Prohibited Substance to the Horse. Together with the Questionnaire, the PR also submitted a second statement by Dr. Schmitz dated 4 February 2010. In her second statement, Dr. Schmitz declared that she had prescribed "Animalintex" padding for the Horse's feet.
23. On 16 February 2010, the FEI responded in writing to the PR's Request for the lifting of the Provisional Suspension. Referring to the EADMCRs, the FEI rejected the argument that the B-Sample analysis was flawed. That according to the EADMCRs, which had been approved by the World Anti-Doping Agency (WADA), only the opening and identification of the sample could be attended. That the PR had been repeatedly informed and well in advance of the date of the B-Sample analysis, but had not requested that an exception be granted. That the representative of the PR, at the time of the B-Sample analysis, did also not request that the B-Sample analysis process be interrupted, to allow him to contact the PR's counsel or the FEI in order to clarify the situation, or to seek a different agreement. The FEI therefore was of the opinion that the B-Sample analysis had been correctly performed, and therefore requested that the Provisional Suspension be maintained.
24. The Preliminary Panel issued a Preliminary Decision on 22 February 2010, maintaining the Provisional Suspension until 25 May 2010. It thereby accepted the FEI's arguments above.
25. On 14 June 2010, the PR submitted supplementary explanations. In those explanations, he stated that he had been employed as sports director for some 20 years at the Centro Ippico di Bellinzago, where horses are trained for racing and Eventing. That he had managed over 140 boxes, 25 apartments, three training racecourses and about 55 hectares of land. That due to the economic crisis he had to dismiss Mr. Pini, and cancel the hearing

he had requested earlier. That his work at the Centro Ippico had always been appreciated. That he made enquiries, but was unable to explain how the Prohibited Substance had entered the Horse's system. That nobody had been willing to help him in his research, assumingly since sporting fraud and animal mistreatment are punished under criminal law in Italy. The PR further conjectured that the Prohibited Substance could have potentially been administered by a third person, or entered into the Horse's system on its way to the Event. With respect to the conditions of the Horse's stable the PR explained that the horses at the Centro Ippico changed boxes frequently, according to the trainers' working requirements, and that therefore, none of the boxes bore the name of the horse stabled inside. The PR concluded by admitting that he had been negligent in his management of the Horse, and stated considering installing CCTV cameras at the stable.

26. The FEI, with its Response of 19 August 2010, submitted a statement by Mr. Maynard dated 12 July 2010, refuting the arguments raised by the PR with respect to the A-Sample and B-Sample analyses. The FEI further took the position that the copies of regulations submitted by the PR in his submission of 28 February 2010 were not applicable to the case at hand, and therefore rejected them. That the applicable FEI Regulations did not foresee the presence of the PR or his representative during the entire B-Sample analysis, and that irrespective of the future rules, laboratories had to apply the current rules while performing analyses. The FEI concluded that the PR had not established a departure from the EADCMRs that would invalidate the positive test results. The FEI further noted that the PR had not established how the Prohibited Substance had entered the Horse's system. With regards to the question of the PR's fault or negligence for the rule violation, the FEI pointed out that the PR's stable management had to be considered as grossly negligent, in particular insofar as the horses were frequently moved from one box to another and as none of the boxes indicated the name of the horse stabled in it.
27. In his submission of 10 September 2010, the PR explained that in his position as sports director of the Centro Ippico he was not empowered to impose any changes inside the stables, or to improve the stable's security. That he had repeatedly informed the owner of Centro Ippico about the potential risks related to the given stable management, but that his views were ignored. Finally, that he had to rent out some of the 18 boxes of the stable block where the Horse was stabled to third parties, and that he had therefore lost control over that stable block.

4.5 Jurisdiction

28. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

4.6 The Person Responsible

29. The PR is the Person Responsible for the Horse, in accordance with Article 118 GRs, as he was the rider of the Horse at the Event.

4.7 The Decision

30. The Tribunal is satisfied that the laboratory reports relating to the A- and B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Fluphenazine, which is a Prohibited Substance, in the sample taken from the Horse at the Event. The Tribunal specifically rejects the argument that the B-Sample analysis procedure was flawed and illegally infringed the PR's constitutional rights. Article 7.1.3(d) of the EADMCRs specifically limits the rights of the Person Responsible or its witness to attend the "*identification and opening*" of the B-Sample. The Tribunal holds that the non-attendance of the PR's representative during the entire B-Sample analysis does not invalidate the B-Sample results.
31. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substance found in the sample is classified as a "Doping" Prohibited Substance.
32. In Doping and Medication cases, a strict liability principle applies, as follows from Article 2.1.1 of the EADMCRs. When a positive case has been proven by the FEI, and in order to eliminate or reduce the otherwise applicable period of Ineligibility or other sanctions, the PR has the burden of proof to establish that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.
33. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.5 of the EADMCRs. With regard to the standard of proof to be met by the PR, Article 3.1., second sentence of the EADMCRs stipulates that the PR has to "*establish specified facts or circumstances*" "*by a balance of probabilities*". Considering the

above standard, the PR's conjectures about the administration of the substance, willingly or by mistake, by a third person, or by some means during the transport to the Competition, do not suffice to meet the burden of proof required by Article 3.1 of the EADCMRs. The Tribunal therefore finds that the PR has not established how the Prohibited Substance entered the Horse's system.

34. Moreover, even if the PR would have established how the Prohibited Substance entered the Horse's system, the Tribunal is of the opinion that he did not demonstrate that he bore "No Fault or No Negligence" or "No Significant Fault or No Significant Negligence" for the positive findings. The PR himself was aware of the potential risks related to the stable management in place at the Centro Ippico, in particular the fact that the horses stabled over there were frequently moved from one box to another, with boxes not bearing the names of the horses stabled inside. The PR stated that he had repeatedly informed the owner of Centro Ippico of that situation, but did nothing else to remedy it. The PR should have ensured that his horses would not be at risk of being accidentally in contact with Prohibited Substances. Persons Responsible have to ensure that all precautions are taken to be certain that their horses participate in international competitions without Prohibited Substances in their systems. The Tribunal therefore considers that the PR has acted in gross negligence in performing his duties as a competitor and a Person Responsible.
35. As a mitigating factor the Tribunal takes into account that the PR had served as sports director of the Centro Ippico for some 20 years with a clean record. The Tribunal has also considered the PR's personal, professional and financial situations and the steps taken by him following the initiation of this case to minimize the risk of future positive cases.
36. According to Article 9 EADMCRs, disqualification from the Events is automatic when there is a positive finding.
37. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

38. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 EADMCR.

4.9 Sanctions

39. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:

1. The PR shall be suspended for a period of **12 (twelve) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, running from 26 November 2009 to 25 May 2010, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 21 May 2011.
2. The PR is fined **CHF 1,000.-**.
3. The PR shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure, as well as the costs of the B-Sample analysis of **CHF 750.-**.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: No

FOR THE PANEL



THE CHAIRMAN Ken E. Lalo