

DECISION of the FEI TRIBUNAL

dated 28 January 2013

Positive Anti-Doping Case No.: 2012/BS02

Horse: QEOPS DE KERBREDEN

FEI Passport No: 103FT43

Person Responsible/NF/ID: Ahmed Jaffar Abdulla Abdulrahim/BRN/10041791

Event/ID: CEI2* - 120 km, Sakhir, BRN/2012_CI_0909_E_S_01

Date: 04 February 2012

Prohibited Substances: Boldenone, Nandrolone, Estranediol

I. COMPOSITION OF PANEL

Mr. Patrick A. Boelens, Chair
Ms. Randi Haukebø, Panel member
Mr. Vladan Jevtic, Panel member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 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.
- 3. Oral hearing:** none; by correspondence.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

- 1. Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 23rd edition, effective 15 November 2011 ("Statutes"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1, 161.2, 168.4 and 169 ("GRs").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012

("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

Veterinary Regulations ("VRs"), 12th edition, effective 5th April 2010, updates effective 1 January 2012, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ahmed Jaffar Abdulla Abdulrahim

3. 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)."

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 – 2.7 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".

IV. DECISION

1. Factual Background

1.1 QEOPS DE KERBREDEN (the "Horse") participated at the CEI2* - 120 km in Sakhir, Bahrain, on 4 February 2012 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Ahmed Jaffar Abdulla Abdulrahim, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").

1.2 The Horse was selected for sampling on 4 February 2012.

1.3 Analysis of urine and blood sample no. FEI-5507213 taken from the Horse at the Event was performed at the FEI approved laboratory, the Sport Science Laboratory (UK) ("HFL"), by Mr. Simon Biddle, Senior

Scientist, under the supervision of Mr. Simon Hudson, Principal Scientist. The analysis of the urine sample revealed the presence of Boldenone Nandrolone and Estranediol in the urine sample (Certificate of Analysis no. 72914 dated 1 March 2012).

1.4 Boldenone, Nandrolone and Estranediol are all anabolic substances that promote muscle development and growth. An international threshold exists for Boldenone and Estranediol detected in male horses other than geldings. However, this threshold does not apply here because the Horse is a gelding. The three substances – when they are detected in a gelding's sample at any concentration – are classified as Banned Substances under the Equine Prohibited Substances List. Therefore, a positive finding for Boldenone, Nandrolone and Estranediol gives rise to an Anti-Doping Rule violation under the FEI Equine Anti-Doping Rules ("EAD Rules").

2. The Proceedings

2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 13 March 2012, through the Bahrain Royal Equestrian & Endurance Federation ("BRN-NF"). 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. In the Notification Letter, the PR was also informed that due to the fact that he had been held responsible in 2011 for an Anti-Doping Rule violation (Case 2011/FT12 – SHARDELL SILVERADO), the period of Ineligibility to be imposed on him would be increased by the Hearing Panel, under Articles 10.2 and 10.7 of the EAD Rules, taking into account the respective severity of both EAD Rule violations and the circumstances of the particular case.

2.2 The Notification Letter further included notice to the owner of the Horse that the Horse was provisionally suspended for a period of two (2) months.

2.3 Upon request by the PR, a Preliminary Hearing took place on 15 March 2012. During the Preliminary Hearing, the PR provided no explanation for the positive findings. The PR further clarified that the Horse had been under the care of the Royal Endurance Team of Bahrain, and in particular its trainer, and that he had been informed only two days prior to the Event that he was going to compete with this specific horse. That upon enquiry, he had been assured by the Horse's trainer, that the Horse had not received any medication.

2.4 Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing Panel.

3. The B-Sample Analysis

3.1 The PR was also informed in the Notification Letter of 13 March 2012 that he was entitled to: (i) the performance of the B-Sample confirmatory analysis on the positive sample; (ii) attend or to be represented at the B-Sample analysis; and/or (iii) request that the B-Sample be analysed in a different laboratory than the A-Sample.

3.2 The PR did not request an analysis of the B-Sample and instead accepted the results of the A-Sample analysis.

4. The Further Proceedings

4.1 On 9 July 2012, the FEI wrote to the BRN-NF stating that since the Preliminary Decision, no further explanations or documentation had been received by the PR. The PR was provided with a deadline of 18 July 2012 to make any further submissions.

4.2 On 18 October 2012 the BRN-NF responded that the PR had been informed of all communications received and had not provided any further explanations following the Preliminary Hearing.

4.3 Further, on 18 October 2012, the FEI requested that given the lack of explanation and participation by the PR in the proceedings, that the PR confirm in writing that he had received the Notification Letter, and understood its content, in particular that the Tribunal may decide to impose a period of Ineligibility of two years on him. In addition, that he did not wish to provide any further explanations to the FEI Tribunal.

4.4 On 21 October 2012, the PR confirmed receipt of the Notification Letter and that he understood its contents. The PR further submitted that he did not wish to provide any further explanations to the Tribunal regarding the positive findings, and that he accepted that the Tribunal may decide to impose a period of Ineligibility of two years on him. Lastly, the PR confirmed that he had been the trainer of the Horse.

4.5 On 1 November 2012, the BRN-NF, after having investigated the matter following request by the FEI, confirmed that, whereas Mr. Khalid Bulami was the general trainer of the Horse, the PR had been the trainer of the Horse on the day of the pre-ride as well as during the Event.

4.6 On 20 December 2012, the Tribunal contacted the owner of the Horse explaining that under Article 161.2(v) of the GRs an additional suspension of the Horse was possible, and that suspensions of horses would typically be considered in order to preserve and protect the welfare of the Horse. The owner was provided with the opportunity to take a position on any potential suspension of the Horse within the deadline of 3 January 2013.

4.7 On 21 January 2013, the BRN-NF confirmed delivery of the Tribunal communication to the owner of the Horse, and explained that no response had been received.

5. Jurisdiction

5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

6. The Person Responsible

6.1 The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as he competed with the Horse at the Event. The Tribunal also takes note that the PR also acted as trainer of the Horse prior and during the Event, and would therefore qualify as Support Personnel under the EAD Rules.

7. The Decision

7.1 As set forth in Article 2.1.2 of the EAD Rules, sufficient proof of an EAD Rule violation under Article 2.1 is established by the presence of a Banned Substance in the Horse's A Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the urine A-Sample reflects that the analytical test was 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 Boldenone, Nandrolone and Estranediol in the urine sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings, and did not request for the B-Sample analysis to be performed. Boldenone, Nandrolone and Estranediol are classified as Banned Substances under the FEI Equine Prohibited Substances List.

7.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 2.1 and 3.1 of the EAD Rules.

7.3 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the rule violation as set forth in Article 10.5.1 of the EAD Rules, or "No Significant Fault or Negligence" as set forth in Article 10.5.2 of the EAD Rules.

7.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EAD Rules, the PR must first establish how the Prohibited Substances entered the Horse's system. This

element is a "prerequisite" to the application of Article 10.5 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

7.5 The Tribunal finds that the PR has not provided reliable evidence on how the Boldenone, Nandrolone and Estradiol entered the Horse's system. In fact the PR himself even admitted that he has no explanation for the presence of the Prohibited Substances in the Horse's system. The Tribunal therefore finds that the PR failed to establish how the Prohibited Substances entered the Horse's system.

7.6 Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.5.1 or Article 10.5.2 of the EAD Rules should be applied. Indeed, in light of the missing explanation and intervention of the PR – who, as rider and trainer of the Horse, is supposed to have certain information regarding the Horse's medication and feeding history – the Tribunal does not have any basis for considering any reduction or elimination of the otherwise applicable sanctions.

7.7 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period for first time offenders. The Tribunal finds that based on the Case File, the PR is a first offender in the meaning of the EAD Rules, since he has not yet violated those EAD Rules. However, the Tribunal considers that the fact that the PR had been subject to a Controlled Medication case in 2011, and had thereby violated the Equine Controlled Medication Regulations, is a factor leading to the finding of aggravating circumstances under Article 10.7.1 and 10.6 of the EAD Rules. Furthermore, the fact that not only one, but three Banned Substances have been detected in the Horse's sample, leads to the finding of aggravating circumstances under Articles 10.7.5 and 10.6 of the EAD Rules. In addition, the Tribunal is displeased by the misleading comments made by the PR, who at first claimed that he was not the trainer of the Horse, but later conceded that he was, and finally, only a few days later clarified that he had only been the Horse's trainer on the day of the Event. In the Tribunal's opinion, the PR's statements are contradictory and suggest that he has not been fully transparent with this Tribunal.

7.8 In light of the "cocktail" of Banned Substances detected in the Horse's system, the Tribunal finds that a suspension of the Horse, in accordance with Article 161.2(v) of the GRs, is adequate and necessary in order to preserve and protect the welfare of the Horse.

8. Disqualification

8.1 For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points

and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.

9. Sanctions

9.1 The FEI Tribunal imposes the following sanctions on the PR and the Horse, in accordance with Articles 161.2(v) and 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **thirty (30) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 13 March 2012, the date of Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through **12 September 2014**.
- 2) The Horse shall be suspended for a period of **eighteen (18) months** to be effective immediately and without further notice from the date of notification. The period of Provisional Suspension, effective from 13 March 2012 to 12 May 2012, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the Horse shall be ineligible through **27 May 2014**.
- 3) The PR is fined **CHF 4,000**.
- 4) The PR shall contribute **CHF 1,500** towards the legal costs of the judicial procedure.

9.2. No Horse and Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organization (Article 10.10.1 of the EAD Rules). Under Article 10.10.2 of the EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.


9.3. According to Article 168.4 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.

9.4. In accordance with Article 12 of the EAD Rules, the PR and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: Owner of the Horse**

FOR THE PANEL

A handwritten signature in blue ink, appearing to read 'Patrick A. Boelens', written in a cursive style.

THE CHAIRMAN, Patrick A. Boelens