



DECISION of the FEI TRIBUNAL

dated 30 January 2012

Positive Anti-Doping Case No.: 2011/BS08

Horse: HOTSPUR OUARRA

FEI Passport No: UAE/ 102PY07

Person Responsible: Sheik Abdul Aziz Bin Faisal Al Qasimi/ UAE

Event: CEI2*-120km – Dubai, UAE

Prohibited Substance: Testosterone (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Erik Elstad, member
Mr. Ken Lalo, member

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. The PR declined the opportunity for an oral hearing.

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, updates effective 1 January 2011 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective

1 January 2011, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, updates effective 1 January 2011, 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: Sheik Abdul Aziz Bin Faisal Al Qasimi

3.3 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."

4. DECISION

4.1 Factual Background

1. HOTSPUR OUARRA (the "**Horse**") participated at the CEI2*-120km – in Dubai (UAE), from 4 to 5 February 2011 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Sheik Abdul Aziz Bin Faisal Al Qasimi, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 5 February 2011. According to the Medication Control Form of 5 February 2011, the Horse is a mare.

3. Analysis of the urine sample no. FEI-5505136 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), in Hong Kong (China), by Mr. Colton Ho Fai Wong, Chemist, under the supervision of Mr. Terence See Ming Wan, Chief Racing Chemist, Head of Racing Laboratory. The analysis of the sample revealed the presence of free and conjugated Testosterone at a concentration of 0,10 microgram per millilitre (Test Report n 11-0220 dated 21 February 2011).
4. The Prohibited Substance detected is Testosterone. Testosterone is an anabolic steroid and sex hormone which increases weight gain, energy levels and muscle mass. Testosterone may potentially be endogenously produced by horses, even mares. The FEI has therefore implemented a threshold concentration in its Anti-Doping policy for Testosterone that is specific to fillies and mares. The threshold concentration in urine for fillies and mares is 0.055 micrograms (55 ng) of free and conjugated Testosterone per millilitre. According to the laboratory results for the A-Sample analysis of urine sample 5505136 taken from the Horse HOTSPUR OUARRA, the concentration of free and conjugated Testosterone in the Sample was 0.10 micrograms per millilitre. Testosterone – provided it is detected in a mare's Sample at a level above the stated threshold - is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

4.2 The Proceedings

5. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR, through the United Arab Emirates Equestrian and Racing Federation ("**UAE-NF**"), by the FEI Legal Department on 9 March 2011. 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 2008 for an Anti-Doping rule violation (Case 2008/13 – CLOUD VALLEY ARMANI), 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.
6. A Preliminary Hearing took place on 11 March 2011. The PR was represented during the Preliminary Hearing by Mr. Anzaq Mehmood, trainer and stable manager at Al Maneya Stable, the Horse's stable. Mr. Mehmood testified that no Prohibited Substances had been given to the Horse, in particular no Testosterone had been administered. That he had no explanation as to how the Testosterone had entered the Horse's system, but that they were investigating whether the Horse had been suffering

from a tumor that had caused the positive finding. Mr. Mehmood further explained that he himself and a team of five to six grooms had prepared the Horse for the race early on 5 February 2011. That the PR had taken over the Horse shortly prior to the Competition, and had returned it back to him and his team immediately after the Competition

7. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

4.3 The B-Sample Analysis

8. Together with the Notification Letter of 9 March 2011, 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 B-Sample analysis, and to request that the B-Sample be analysed in a different Laboratory than the A-Sample.
9. On 16 March 2011, the PR, through the UAE-NF, requested that the B-Sample analysis be performed in a different laboratory than the A-Sample analysis.
10. On 29 March 2011, Mr. Mehmood explained having discussed the matter with the PR, and that the decision had been taken to withdraw the B-Sample confirmatory analysis request. According to Mr. Mehmood, the Horse had been further examined in the hospital, but it had not been possible to confirm the initial suspicion of an ovarian tumour. Mr. Mehmood maintained that he did not cause Testosterone to be administered to the Horse, and therefore asserted that the Testosterone must have been administered to the Horse by some unknown third person as an act of sabotage at the Event venue the night before the Event. In this context, Mr. Mehmood alleges that the Horse had been out in the Event paddocks the night before the Event, and that there had been no security and that anybody could have had access to the Horse at that time.

4.4 The Further Proceedings

11. By email to the UAE-NF of 13 October 2011, the FEI explained that there had not been any involvement by the PR in the procedures to date, but reminded the UAE-NF that in light of the FEI Anti-Doping Rules, sanctions were likely to be imposed on the PR. The FEI requested that the PR confirm receipt of the Notification Letter, and invited him to either provide his explanations, or to provide a statement that he did not wish to submit any explanations and that the case may be submitted to the FEI Tribunal for decision.
12. The PR, by email of 16 October 2011, explained having received the Notification Letter and the follow up performed by the UAE-NF,

and that he did not have any further explanations to provide.

13. On 15 November 2011, the FEI replied in writing to the PR's explanations. The FEI argued that the PR had not provided any evidence for his allegation that a third person had administered the Prohibited Substance to the Horse, and that therefore, those allegations remained entirely unsubstantiated speculation. That the alleged lack of stable security had not been raised during the sampling process, and that moreover, under FEI Regulations, inadequate stable security would not relieve the Person Responsible from responsibility for the Horse, nor from his responsibility for a violation of the EADCM Regulations. That the PR had not demonstrated by any means how the Testosterone had entered into the Horse's system, and that therefore, the first prerequisite for any elimination or reduction of the otherwise applicable two-year period of Ineligibility under Article 10.5 of the EAD Rules was not fulfilled. The FEI argued that moreover, the PR had not provided any information with respect to the degree of his Fault or Negligence for the rule violation, and that therefore any basis for any elimination or reduction of the two-year period of Ineligibility was lacking. The FEI also argued in its submissions that insofar as it was the PR's second violation, he should be sanctioned accordingly.
14. Following the FEI's submission, the UAE-NF explained on 16 November 2011 that the PR had received the submission and did not wish to submit anything further. During the entire course of the proceedings, neither the PR nor any of his representatives ever disputed the fact that it was the PR's second violation, or disputed his involvement in the first case, CLOUD VALLEY ARMANI. As a result, the Tribunal initially based the sanction in this case on the PR's status as a repeat offender. However, after doing so, the UAE-NF finally explained that notwithstanding the similar name between the PR in CLOUD VALLEY ARMANI and the PR in this case, the two riders are different people. The FEI subsequently verified the information and confirmed that the PR in this case was not the PR in the CLOUD VALLEY ARMANI case. On such basis, the Tribunal has decided to correct its original decision (which was never made public) and to decide the case as a first time offence according to the EADCM Regulations.

4.5 Jurisdiction

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

4.6 The Person Responsible

16. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

4.7 The Decision

17. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone above the international threshold in the samples taken from the Horse at the Event. Provided Testosterone is detected in a mare's urine sample at a level above the 0.055 microgram threshold, it is classified as a Banned Prohibited Substance under the FEI Prohibited Substances List. The PR did not contest the accuracy of the test results or the positive findings.
18. The FEI has thus established an *Adverse Analytical Finding*, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
19. In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once a positive case has been established by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings 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.
20. 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 Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.5 of the EAD Rules. With regard to the standard of proof to be met by the PR, Article 3.1 of the EAD Rules, second sentence, stipulates that the PR has to establish "*specified facts or circumstances*" "*by a balance of probability*".
21. The Tribunal holds that the PR has not established by a balance of probability how the Testosterone entered into the Horse's system. Nonetheless, the Tribunal finds that even if the PR had established how the Prohibited Substance entered into the Horse's system, he would not have been entitled to any elimination or reduction of the two-year suspension. In this context, the Tribunal would like to highlight that under the FEI Rules, in particular Article 2.1.1 of the EAD Rules, the PR is responsible for what the Horse ingests, what the Horse is administered and the conditions in which the Horse is kept. Lastly, with regards to the alleged lack of stable security, the Tribunal takes note that neither the PR, nor the PR's witness during the sampling process, complained about insufficient security at the time of the Event or within a reasonable time thereafter, and that this issue was only raised as a supposed defence to the anti-doping rule violation. Notwithstanding the above, the Tribunal would like to reiterate that according to Article 1005.2.4 of the Veterinary Regulations and Article 118.6 of the

GRs, any alleged lack or insufficiency of stable security does not relieve the PR from his responsibility as rider and competitor. The Tribunal would therefore be unable to reduce the Ineligibility period in accordance with Articles 10.5.1 or 10.5.2 of the EAD Rules even if the PR had established how the Prohibited Substance entered into the Horse.

22. 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.

4.8 Disqualification

23. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from all results obtained in the Competition. All medals, points and prize money won at the Competition must be forfeited, in accordance with Article 9 of the EAD Rules.

4.9 Sanctions

24. Under the currently applicable EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period for first time offenders. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10.2 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 9 March 2011 to 30 January 2012, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the Period of Ineligibility expires on 9 March 2013, which means that the PR can compete as of that day.
- 2) The PR is fined **CHF 5.000.-**.
- 3) The PR shall contribute **CHF 1.000.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

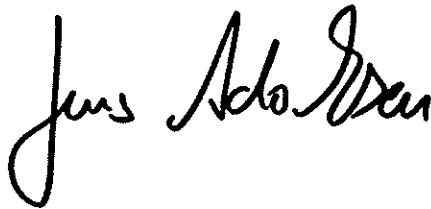
5.1 The person sanctioned: Yes

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

A handwritten signature in black ink, reading "Jens Adolphsen". The signature is written in a cursive style with a large initial 'J'.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen