

DECISION of the FEI TRIBUNAL

dated 21 March 2012

Positive Anti-Doping Case No.: 2011/BS09

Horse: KARABIL KAIYA HAI

FEI Passport No: UAE40399

Person Responsible: Ali Mohammed Al Muhairi

Event: CEI2* 120 Km, Dubai (UAE); 4-5 February 2011

Prohibited Substance: Testosterone (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Erik Elstad, member
Mr. Armand Leone, 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 and at the oral hearing, as also made available by and to the PR.

2.3 Oral hearing: 17 January 2012, Lausanne, Switzerland

Present:

For the PR: Mr. Ali Mohammed Al Muhairi, PR
Mr. Jeremy Dickerson, Counsel for the PR
Mr. James Pheasant, Counsel for the PR
Ms. Georgina Shaw, Counsel for the PR
Dr. Russell James Malton, Veterinarian
Dr. Mark Dunnett, Expert
Mr. Mariano Bonavita, Witness
Ms. Ana Ruth Juarez, Interpreter

For the FEI: Ms. Lisa F. Lazarus, General Counsel
Ms. Carolin Fischer, Legal Counsel
Mr. Jonathan Taylor, Bird & Bird (external legal counsel)
Prof. Vivian James, Expert (by conference call)
Mr. Ian Williams, Director Non-Olympic Sports

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, 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 ("**EADCMRs**"), 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 5 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: Ali Mohammed Al Muhairi

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. KARABIL KAIYA HAI (the "Horse") participated at the CEI2* 120 km in Dubai (UAE) from 4 to 5 February 2011 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Ali Mohammed Al Muhairi, who is the Person Responsible in accordance with Article 118 of the GRs (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 castrated male horse.

3. Analysis of the blood and urine sample no. FEI-5505155 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Dr. Colton Ho Fai Wong, Chemist, under the supervision of Dr. Terence See Ming Wan, Chief Racing Chemist (Head of Racing Laboratory). The analysis of the urine sample revealed the presence of Testosterone, at a concentration of free and conjugated Testosterone of 0.027 microgram per millilitre (Test Report 11-0221 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 male horses. The FEI has therefore implemented a threshold concentration in its anti-doping policy for Testosterone that is specific to geldings. The threshold concentration in urine for geldings is 0.02 micrograms (20 ng) of free and conjugated Testosterone per milliliter. According to the Horse's data, it is a gelding. Therefore, the concentration of free and conjugated Testosterone found in the Horse's sample was above the threshold. Testosterone – provided it is detected in a gelding's Sample at a level above the threshold - is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Therefore, the positive finding for Testosterone above the threshold in the Horse's sample gives rise to an Anti-Doping Rule Violation under the FEI EADCMRs.

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 by the FEI Legal Department on 9 March 2011, through the United Arab Emirates Equestrian & Racing Federation ("UAE-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 2009 for an Anti-Doping rule violation (Case 2009/11 – SUDAN), 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. Upon request by the PR, a Preliminary Hearing took place on 14 March 2011. During the Preliminary Hearing, Dr. Russell James Malton, the Horse's Veterinarian and the representative of the PR, explained that the Horse was stabled at Seeh Al Salam Endurance Stable ("SAS"), where about 160 horses were stabled. Dr. Malton further contended that Testosterone would not usually be given to endurance horses, and that no Testosterone had been administered to the Horse. He suggested that some sort of contamination must have caused the positive finding. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing Panel.

4.3 The B-Sample Analysis

7. 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.

8. The PR confirmed on 16 March 2011 that he wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis and that he wished for a representative to attend the B-Sample analysis.

9. The B-Sample analysis was performed on the urine from 9 to 11 May 2011 at the Australian Racing Forensic Laboratory, Australia ("ARFL"), an FEI-accredited laboratory, under the supervision of Mr. John Keledjian, Operations Director of ARFL.

10. The PR did not attend the B-Sample analysis, but Mr. Steve Korkoneas represented him during the entire B-Sample analysis.

11. In his witness statement, Mr. Steve Korkoneas 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 Australian Racing Forensic Laboratory (ARFL) corresponds to that appearing on the collection documentation accompanying the sample".

12. The B-Sample analysis of the urine confirmed the presence of Testosterone at a concentration of 27 microgram per litre (External Confirmation Test Certificate dated 12 May 2011).

13. The results of the B-Sample analysis were notified to the PR on 31 May 2011, through the UAE-NF.

4.4 The Further Proceedings

14. By letter of 17 June 2011, the PR explained that following analysis of the Horse's feed and supplements collected at the Horse's stable, he believed having detected the source of the positive finding. The PR argued that most likely, a product administered to the Horse was contaminated with Testosterone. The PR therefore asked for an extension of the deadline to provide his explanations, in order to fully investigate the circumstances of the contamination. The PR also confirmed his request for a hearing in front of the FEI Tribunal.

15. By email of 20 June 2011, the FEI accepted the PR's request for an extension of the deadline, and also suggested that the hearing take place in October or November 2011. In response, the PR insisted on a hearing date in January or February 2012. Following several exchanges of correspondence between the FEI and the PR about the potential hearing date, the FEI informed the PR that it was for the FEI Tribunal to decide the issue. Upon request by the PR, he was granted permission to address written submissions to the Tribunal on the issue. Therefore, by submission of 1 September 2011, the PR argued in a nutshell that in light of the fact that both Parties would need sufficient time to prepare the respective positions, and that several diaries needed to be coordinated for the hearing, the hearing should take place in February 2012. By responsive submission of 13 September 2011, the FEI argued that the PR had not yet provided any details about the investigations he was undertaking and, in light of that, he was asking for an unprecedented period of time to develop his explanations.

16. By email of 15 September 2011, the PR claimed that he had indeed provided details regarding his investigations. In particular, that he had identified the source of the Prohibited Substance as being a contaminated product administered to the Horse. That subsequently, he had informed the FEI that a particular Testosterone ester, Testosterone propionate, had been linked with the elevated levels of Testosterone in the Horse's sample without providing any further explanation at that time.

17. By letter to the Parties of 21 September 2011, the Tribunal stated that a considerable period of time had elapsed since the initiation of the proceedings, and that no supporting evidence had been provided by the PR that would justify his requests. The Tribunal therefore set a specific timetable for the Parties' submissions, and suggested that the hearing take place at the beginning of December 2011.

18. By submission of 5 October 2011, the PR submitted his explanations. In a nutshell, he contended that he had established by a balance of probabilities that the Testosterone in excess of the threshold came to be present in the Horse's system through contaminated medication, and that he bore No Fault or Negligence for the manner in which the Testosterone entered the Horse's system.

19. Together with his submission, the PR provided a written statement by himself, an Expert Report by Dr. Mark Dunnett of Independent Equine Nutrition, as well as Witness Statements by Mr. Mariano Bonavita, Head veterinarian at SAS; Dr. Russell James Malton, veterinarian at SAS; Mr. Maximo Cabal, veterinarian at SAS; Ms. Maria Celeste Assaad, veterinarian at SAS; Mr. Wajid Kahn, groom of the Horse; Mr. Takhat Singh Rao, assistant trainer at SAS; Ms. Victoria Jane Blagdon, Work Rider/Secretary at Dubai Racing Club and assistant to Dr. Malton; Mr. Sohail Saeed, groom at SAS; Mr. Sherief Babu Chemban, day foreman at SAS; and Mr. Mujeeb Rahman, night watchman at SAS. The PR accepted that Testosterone had been detected in the Horse's sample above the threshold, that the presence of Testosterone above the threshold constituted a prima facie Anti-Doping Rule violation and that he as the rider of the Horse at the Event was the Person Responsible under the EADCMRs. The PR further contended that following his investigations, the presence of the Testosterone had been traced to contaminated batches of two medications, Batacas and Anartritico, delivered to SAS on 25 October 2010. In this context, the PR relied on the Expert Report by Dr. Dunnett. Dr. Dunnett explained that he had visited SAS in March 2011, and had taken samples from all the feeds, dietary supplements and veterinary medications in use at the stable with which the Horse came - or could potentially have been - into contact, and had analysed them for the presence of Testosterone, Testosterone prohormones and Testosterone esters. That as a result of the analysis, Dr. Dunnett had found two batches of Batacas (including one batch, numbered 068310, manufactured in September 2010) and two batches of Anartritico (including one batch 068110, manufactured in October 2010) to contain varying concentrations of Testosterone propionate. The PR's veterinarians further explained that Mr. Alberto Contard, former Head Veterinarian at SAS, who had left SAS on 19 January 2011, had prescribed a five day course of Batacas to the Horse on 18 January 2011, as treatment of its exertional rhabdomyolysis syndrome, also called "tying-up". That it was therefore entirely possible that Batacas had been administered to the Horse on both 18 and 19 January 2011. That furthermore, whereas no record existed regarding the prescription of any Anartritico, and that none of the veterinarians recalled administering Anartritico to the Horse, it was well possible that after the departure of Mr. Contard on 19 January 2012, the Horse's treatment was alternated by Mr. Bonavita, and that Anartritico was administered to the Horse from 20 to 24 January 2011. Ms. Blagdon further stated that whereas no record was kept at SAS of the particular batch number of a medication given to the horses, it was likely that the batch of Anartritico used at SAS in January 2011 had been ordered by her and received by SAS in October 2010, specifically on 25 October 2010. Based on the above, the PR argued that he had proven that at least 24 mg of Testosterone propionate had been injected into the Horse in the period of 18-24 January 2011. With regard to Batacas and Anartritico, the PR stated that the two products were manufactured by Chinfield S.A. ("Chinfield"), based in Argentina. That he had written to Chinfield at the end of September 2011, drawing their attention to the contamination and

requesting explanations. That by the date of his submission, Chinfield had not yet answered to the request. The PR also rejected the December hearing dates proposed by the FEI Tribunal, and insisted that the hearing takes place in January 2012 at the earliest.

20. By email of 14 October 2011, the PR informed the FEI that he would shortly submit a Second Expert Report by Dr. Dunnett, stating that Dr. Dunnett had performed analyses on samples of hair taken from the Horse. The PR suggested submitting the Second Expert Report by Dr. Dunnett prior to the response submission of the FEI scheduled for 18 November 2011, rather than on the date foreseen for his Response to the FEI Submission, 30 November 2011.

21. By email of 21 October 2011, the FEI responded to the PR that the Second Expert Report would have to be considered as technically submitted too late. The FEI however agreed to not formally oppose to the late submission, in order to grant the PR every opportunity to defend his case. The FEI further stated that the FEI Tribunal had accepted a hearing date to be scheduled in January 2012.

22. By letter of 28 October 2011, the FEI requested that the PR submit the following documents: (i) the foreman's and the veterinarian's diary for the period of 19-25 January 2011; (ii) an account of the circumstances leading to the termination of Mr. Contard's employment at SAS on 19 January 2011; and (iii) the response by Chinfield to the PR's letter of September 2011.

23. By submission of 10 November 2011, the PR provided the two diary excerpts requested by the FEI, and explained that it had been Mr. Contard's decision to resign from his position as Head Veterinarian at SAS. That it was understood that Mr. Contard had wished to return to his home country Argentina, and that the circumstances of his departure had nothing to do with the Horse and any treatment received by the Horse. Furthermore, the PR submitted two letters by the President of Chinfield. In those letters, the President of Chinfield stated that the alleged contamination was "impossible" given that at Chinfield, hormonal products such as Testosterone were kept entirely separate from the products Anartritico and Batacas, and that hormonal products were only used at a completely different facility than the facility where Anartritico and Batacas were manufactured.

24. In the following, the hearing was rescheduled to take place on 17 January 2012, and the Parties' deadlines for submissions were adjusted to the new hearing date.

25. The PR submitted the Second Expert Report by Dr. Dunnett on 16 November 2011. Dr. Dunnett explained having taken hair samples from the Horse in March and August 2011, and that the analyses of those samples had established the presence of lidocaine, orphenadrine and phenylbutazone – three of the labelled ingredients of Anartritico – in the

Horse's hair samples. Moreover, that the results of the hair analysis were consistent with the co-administration of those ingredients through a single medication containing all of them, i.e. Anartritico, in January 2011. That furthermore, the results confirmed the presence of Testosterone propionate in the Horse's system.

26. By letter of 8 December 2011, the FEI raised several questions resulting from the PR's submission and the Expert Reports by Dr. Dunnett. Amongst others, the FEI requested evidence establishing that contaminated Anartritico had been administered to the Horse in the period of 20 to 24 January 2011; evidence that the batch of Anartritico delivered to SAS on 25 October 2010 contained the allegedly contaminated batch of Anartritico analysed by Dr. Dunnett; as well as details of the sampling process applied by Dr. Dunnett when taking the samples at SAS.

27. By letter of 16 December 2011, the PR explained that no evidence was available to prove with absolute certainty which particular batch of Anartritico was administered to the Horse. That however, two orders for Anartritico were delivered to SAS in October 2010, coinciding with the October 2010 manufacturing date of the presumably contaminated batch with batch number 068110. That furthermore, one half full bottle of Anartritico that had been sampled by Dr. Dunnett at SAS in March 2011 and subsequently analysed by him, emanated from batch number 068110, and had been in use at SAS around the time that Anartritico was administered to the Horse. That furthermore, there was no evidence to prove with absolute certainty that the order of Anartritico delivered to SAS on 25 October 2010 contained samples from the presumably contaminated batch, batch 068110. That however, the delivery date of the order – 25 October 2010 - coincided with the manufacturing date of the presumably contaminated batch. Furthermore, that according to the information received by him, after the manufacturing of Anartritico in October 2010, the next production of Anartritico took place in May 2011, and that therefore, when Anartritico was again ordered by SAS in January 2011, it was still from the same batch with batch number 068110.

28. On 20 December 2011, the FEI received a submission by Chinfield, by which Chinfield informed the FEI that an independent laboratory at the University of Buenos Aires had analysed samples from the allegedly contaminated batches of Anartritico and Batacas, and that no evidence of contamination with Testosterone or Testosterone propionate had been found.

29. On 21 December 2011, the FEI provided its Response to the PR's submissions. Together with its Response, the FEI also submitted an Expert Report by Professor Vivian James. The Parties agreed that the Expert Report by Dr. Andrew Higgins and the Witness Statement by Mr. Ian Williams, FEI Director Non-Olympic Sports, referred to in the FEI Response, would be submitted shortly after the date of service of the FEI Response. In a nutshell, the FEI argued that insofar as a rule violation by the PR had been established by the evidence submitted, and that the PR

had also accepted that rule violation, only the consequences of the rule violation needed to be considered. In this context, the FEI explained that it had received information that the PR had competed on 12 and 19 February 2011. The FEI therefore requested that not only the PR's results obtained at the Event, but also the results obtained at the February 2011 events should be disqualified, in accordance with EAD Rules Article 10.8. The FEI further contended that the PR had not established by a balance of probabilities how the Testosterone had entered into the Horse's sample, and that therefore, no reduction or elimination of the otherwise applicable period of ineligibility should be decided upon by the Tribunal. The FEI argued to this extent that the PR had not established that any Anartritico had been administered to the Horse in January 2011 or otherwise, in particular as the alleged administration was not mentioned in the extensive medical reports kept by the veterinarians at SAS, and as the Head Veterinarian in charge at the time of the alleged administration cannot remember with certainty having altered the Horse's medication from Batacas to Anartritico during the time period in question. Furthermore, the FEI stated that the departure of Mr. Contard during the specific time period raised more questions than it answered. That furthermore, even if it would be assumed that the Horse had been administered the amounts of Anartritico and Batacas as alleged by the PR, the PR had not adduced sufficient evidence that the allegedly used two medications emanated from the same batch as the medications analysed by Dr. Dunnett, and found to be contaminated. The FEI highlighted that Chinfield, following its investigation into the alleged contamination - in particular independent analyses of samples from various batches of Anartritico and Batacas, including those batches for which Dr. Dunnett had found contaminated samples - had excluded any contamination of Anartritico or Batacas with Testosterone or Testosterone propionate during the manufacturing process. Relying on the Expert Statement by Dr. Higgins, the FEI further argued that any contamination occurring during the manufacturing process would be expected to lead to a reasonably evenly distributed contamination throughout the respective batch, and not to the variation of contamination as found by Dr. Dunnett. Relying on Professor James' Report, the FEI further argued that whereas the hair analysis performed by Dr. Dunnett confirmed that some Anartritico had been administered to the Horse in January 2011, and that some Testosterone propionate had been administered to the Horse too, there was however no evidence that the Anartritico administered contained the Testosterone propionate. Lastly, the FEI, relying on Professor James' finding that the half-life of both Testosterone propionate and Testosterone in equine blood was very short (3-4 hours at most, taken together), contended that even if it was assumed that the Horse had been administered the amount of Anartritico as alleged by the PR and at the time as alleged, and even if that amount would have been as contaminated as the most contaminated sample of Anartritico found by Dr. Dunnett, the total amount administered would have left the Horse's system after at the latest 24 hours, and that therefore it could not have

had any impact on the concentration of Testosterone in the Horse's urine on the date of the Event.

30. As regards the specific period of Ineligibility to be imposed on the PR the FEI requested that in light of the severity of the PR's first offence, the period of Ineligibility to be imposed on the PR should be of more than two years, and up to eight years. Lastly, the FEI produced evidence that during the period of Provisional Suspension, the PR had attended at least two FEI events in another capacity than as spectator. The FEI therefore requested that the Period of the Provisional Suspension should not be credited under EAD Rules Article 10.9.3, and that any period of Ineligibility to be imposed on the PR should be deemed to commence on the date of the issuance of the Tribunal decision.

31. On 23 December 2011, the FEI submitted the Witness Statement of Mr. Williams, and on 3 January 2012, the Expert Report by Dr. Andrew Higgins. Furthermore, on 9 January 2012, and following request by the PR, the FEI submitted the exchanges by Dr. Higgins with Mr. Piercy and Dr. Coombs, as referred to in Dr. Higgins' Expert Report.

32. The PR submitted its Rebuttal submission on 12 January 2012. Together with the submission, the PR provided a second statement, as well as a second Witness Statement by Dr. Russell and Mr. Bonavita, and a third Expert Report by Dr. Dunnett. In his third Expert Report, Dr. Dunnett challenged the view expressed by Professor James, that the half-life of both Testosterone and Testosterone propionate in equine blood was very short. The PR, in his submission, argued that in case it should be found that he does not bear any Fault or Negligence for the present rule violation, his results from the February 2011 events should not be disqualified. That even if a no Fault or Negligence finding should not be made, it would be unfair to disqualify his results since he had competed on different horses, which had been tested negative, and that therefore, the level playing field had been maintained for those events. As regards the source of the Prohibited Substance, the PR maintained that he had established that the contaminated Batacas and Anartricio administered to the Horse between 18 and 24 January 2011 are more likely than not the reason for the elevated levels of Testosterone in the Horse's sample. The PR further argued that there was no other credible explanation for the presence of Testosterone in the Horse's system, and that given the circumstances neither he himself, nor his veterinarians could have reasonably known or suspected that the Horse had been administered a Banned Substance through the administration of Batacas and Anartricio. With regards to sanctions to be imposed on him, the PR argued that, in case his plea for No Fault or Negligence was not be accepted by the Tribunal, as a matter of proportionality the minimum period of Ineligibility should be imposed on him, notwithstanding that the case at hand was his second violation. The PR further argued that the evidence brought forward by the FEI related to his alleged violation of the period of Provisional Suspension was insufficient, and that therefore, the period of Provisional Suspension should be credited against any period of Ineligibility be

imposed on him. The PR also submitted that he had sought in good faith to comply with the terms of his Provisional Suspension and therefore should be given credit for that period of Provisional Suspension against any period of Ineligibility imposed by the FEI Tribunal.

33. In the following, the Case File was submitted to the FEI Tribunal. Together with the Case File, the FEI Legal Department further submitted to the FEI Tribunal a document containing the Parties' Stipulations for the hearing ("the Stipulations"), based on discussions entered into by the Parties outside the presence of the FEI Tribunal. By means of those Stipulations, the PR accepted a) liability for an EAD Rules Article 2.1 violation, b) that his results obtained together with the Horse at the Event would be disqualified and all medals, points and prize money won forfeited; and c) that he had to bear the costs of the B-Sample analysis.

34. The Final Hearing took place on 17 January 2012. In their opening submissions, both Parties referred to the Stipulations and agreed that the only issue to be resolved by the FEI Tribunal was the consequences to be imposed. The Parties agreed that the PR's EAD Rules Article 10.5 mitigation plea could not be accepted, unless the PR first discharged his burden of showing, on the balance of probabilities, how the Testosterone found in the Horse's urine sample had got into the Horse's system. Following oral submissions on the issue, the FEI Tribunal advised the Parties that the PR would be expected to make a positive case that tiny amounts of Testosterone propionate ingested 18-12 days before the Event could have remained in the Horse for long enough to affect the urinary concentration of Testosterone in the Horse's urine on the day of the Competition.

35. Given that liability was accepted by the PR and that the PR had the burden of proof under EAD Rules Article 10.5, it was agreed that he would lead with his witnesses, the first of whom was Dr. Dunnett. On cross-examination of Dr. Dunnett, it was established (in summary) that:

- a. Dr. Dunnett's Second Report showed, by analysis of the Horse's hair sample, that it was more likely than not (a) that not only Batacas but also Anartritico had been administered to the Horse between 18 and 24 January 2011, and (b) that at some point prior to August 2011, the Horse had also ingested Testosterone propionate. Dr. Dunnett's view was that the data was consistent with ingestion of Testosterone propionate in January 2011, i.e. at the same time as the Batacas and Anartritico were administered. However, Dr. Dunnett accepted that the data did not show that the Testosterone propionate ingested by the Horse was contained in the Batacas and Anartritico administered to the Horse in January 2011.
- b. Dr. Dunnett's First Report established that samples from batches of Batacas and Anartritico collected from SAS in

March 2011 contained Testosterone propionate in varying concentrations, with by far the highest concentration being 1756 ng/ml in one sample from one batch of Anartritico. However Dr. Dunnett acknowledged that he had no way of knowing (and there was no evidence he was aware of in the record that showed) whether the Batacas and Anartritico administered to the Horse in January 2011 came from the same contaminated batches.

- c. As for when the contamination had taken place, Dr. Dunnett insisted that all but one of the samples of Anartritico and Batacas that he had taken from SAS were in sealed ampoules that showed no sign of tampering. He did not believe it was possible to tamper with the samples once they were in the sealed ampoules without that being evident. Dr. Dunnett therefore concluded that the contamination must have taken place during manufacture. He discounted the evidence of the manufacturer, Chinfield, that independent analysis of samples from the same batches of Anartritico and Batacas had found no Testosterone propionate, on the allegation that the analysis performed on behalf of Chinfield had not been sufficiently sensitive to find contamination at the trace levels that he had found. While the FEI accepted that criticism of the analytical evidence presented by Chinfield, it noted (and Dr. Dunnett did not dispute) that (i) Chinfield was accredited by the relevant authorities as conforming with Good Manufacturing Practices, which included manufacturing of products containing hormones such as Testosterone at a completely separate plant (operated by a third party) to the plant at which products such as Anartritico and Batacas were manufactured; (ii) there had never been any reported case of Testosterone propionate contamination of any medicinal products (whether manufactured by Chinfield or otherwise) anywhere in the world; and (iii) to the contrary, that Chinfield in particular had an excellent reputation. Dr. Dunnett nevertheless maintained that in his view the only explanation for his findings was contamination during the manufacturing process.
- d. Dr. Dunnett's Fourth Report established that Testosterone propionate and Testosterone in Batacas or Anartritico degrade over time when stored at 25°C. On that basis, Dr. Dunnett suggested that the samples he had collected in March 2011 would have contained more Testosterone propionate when administered to the Horse

in January 2011. When pressed as to how much more, he accepted that no one knew how much Testosterone propionate the medication might have contained at the date of manufacture, or how far along the "reverse S curve" of degradation the samples were as of 18-24 January 2011, when the medication was administered to the Horse. Nevertheless, he stated that in his view the medication administered to the Horse contained a minimum of 24 mg of Testosterone propionate, and that it had been administered by intravenous injection to the Horse over that seven day period in doses of 2mg/2mg/4mg/4mg/4mg/4mg/4mg.

- e. In his Third Report Dr. Dunnett challenged the view expressed by Professor Vivian James, that the half-life of both Testosterone propionate and Testosterone in equine blood was very short (3-4 hours at most, taken together).
 - (A) Dr. Dunnett acknowledged that he had never researched or written any papers on the subject of steroid endocrinology. He accepted Professor James' expertise in that area, although he questioned whether Professor James had much equine experience.
 - (B) Dr. Dunnett noted that the papers that Professor James relied upon as showing a very short (c.1 hour) half-life for Testosterone propionate in blood related to experiments on humans and rats respectively, and may not apply cross-species. He accepted on cross-examination that the three papers he himself had cited on this point all said that Testosterone propionate was rapidly converted into Testosterone ('hydrolysed') in the blood, but he said no evidence was cited to support that, and maintained that some part of any Testosterone propionate injected intravenously (he did not know how much) would not convert to Testosterone immediately but instead would collect in the fatty tissues. He said he did not know how long that Testosterone propionate would stay in the fatty tissues. He had cited Thiopental as a potentially analogous example, noting that it went from the blood into the fatty tissues, but he acknowledged he did not know how long it would stay there. Dr. Dunnett

noted that the data showed that Testosterone propionate injected as a depot intramuscularly leaked into the blood over a period of several (as many as eight) days.

- (C) Dr. Dunnett said that the papers that Professor James cited as establishing a three-hour half-life for Testosterone in blood reflected experiments where horses in laboratories had been castrated, rather than experiments where competition horses had been injected intravenously with Testosterone propionate, and so would not necessarily be relied upon in the case at hand. Asked what he said the half-life of Testosterone in blood was, if not three hours, he said he did not know.

36. Then Professor James testified, first explaining in direct examination why Dr. Dunnett's comments did not cause him to alter his opinion that contaminated medication injected intravenously in 18-24 January 2011 could not have caused the adverse analytical finding in respect of the 5 February 2011 sample, and then on cross-examination by the PR's lawyer. In summary:

- a. Professor James conceded that he did not have the experience in hair analysis that Dr. Dunnett had, but nevertheless maintained his view that the data from the analysis of the hair sample from the Horse was not consistent with ingestion of Testosterone propionate in January 2011.
- b. Professor James had 30 years of experience in relation to steroid endocrinology, including research of equines that had prompted the horseracing authorities to change their anti-doping rules. Relying on that experience, assuming for sake of argument that the medications administered to the Horse in January 2011 were contaminated with Testosterone propionate, Professor James said it was not possible to determine, based on the available data, including the degradation experiment conducted by Dr. Dunnett, how much Testosterone propionate would have been in those medications. However, even taking Dr. Dunnett's estimate that 24 mg of Testosterone propionate were ingested in the period 18-24 January 2011, Professor James was sure that all of that Testosterone propionate would have been eliminated from the Horse very quickly (within 48 hours) and therefore the Testosterone propionate cannot have had any impact on the concentration of Testosterone in the

Horse's urine 18-12 days later.

- c. Professor James maintained that if Testosterone propionate was injected intravenously, most of it would be converted to Testosterone by enzymes in the blood almost immediately. There was no data in relation to horses but data from experiments involving humans and rats indicated a half-life of Testosterone propionate in blood of less than an hour (and at small doses a half-life of only a few minutes) and in his view the same would apply with respect to horses. He accepted that a very small amount of the Testosterone propionate could pass into fatty tissues, but the concentration of Testosterone propionate in the fatty tissues would very quickly be greater than the concentration of Testosterone propionate in the blood (because of the rapid hydrolysis of Testosterone propionate in the blood) and that, combined with the strong blood flow through fatty tissues, meant that the Testosterone propionate would pass back out again from the fatty tissue into the blood very quickly. (In respect of the Thiopental example offered by Dr. Dunnett, Professor James noted that the data showed the half-life in the blood would be 6 hours, so that it would all be eliminated from the system within 36 hours). None of this was true of Testosterone propionate injected as a depot in muscle, where the perfusion was poor and the exposure to blood flow was limited. Therefore the slower release into the blood of Testosterone propionate injected intramuscularly was irrelevant. Accordingly, Professor James maintained his view that Testosterone propionate injected intravenously into a horse would take about one hour to be converted into Testosterone.
- d. Professor James also maintained his view that the half-life of Testosterone in the blood would be less than three hours. He accepted that no paper he knew of had looked at the precise issue of what happened to Testosterone if injected into a horse intravenously. However, he had found papers that showed that when horses were castrated (so cutting off the natural source of Testosterone) it took less than 24 hours for the Testosterone that was in the horse's blood at that point to be completely eliminated from the horse. In his view, whether the Testosterone in the blood came from an injection or from the testes would not make a difference to its half-life in the blood, and therefore the data showing how long it took for Testosterone to be eliminated following castration of stallions was a reliable

indicator of the half-life of Testosterone injected intravenously. Nor did he think that it would make a difference that the horses in the castration experiments were not competition horses.

- e. Professor James said he had seen no evidence (and Dr. Dunnett had provided no evidence) to suggest that the presence of four other drugs (the active ingredients of Anartritico) in the Horse's system at the same time as the Testosterone propionate would have had a material impact on the half-life issue. He therefore discounted that possibility.
- f. Professor James said that once the Testosterone was passed out of the blood, it would go very quickly through the liver and kidney into the urine.

37. The next witness to testify was the PR:

- a. He confirmed that his belief that the Horse's adverse analytical finding was caused by contamination came from the fact that he had instituted very careful controls and procedures at SAS, which ruled out intentional or inadvertent administration of Testosterone to the Horse or any other explanation. However, he acknowledged on cross-examination that not only had those controls and procedures failed in this case (because there was no record that the Horse, the best horse in the stable, had been administered 100 mg of Anartritico just two weeks before a major Event), but they had also failed on three other occasions since 2008, with the result that horses from his stables had been found to have Prohibited Substances in their systems:
- b. The urine of FENWICK CADENZA, collected after a Competition in February 2008, had been found to contain Dexamethasone, Phenylbutazone (and two of its metabolites), Triamcinolone Acetonide, 3-Hydroxymepivacaine, and Ethanol. Dr. Malton had testified that the Phenylbutazone and Ethanol may have been administered by the SAS medical staff (who had made a mistake about detection times) whereas the remaining substances may have been administered to the horse inadvertently by other stable staff. The rider was banned for 10 months but the Tribunal was clear that the ingestion of the Prohibited Substances had taken place while the horse was under the control of the PR and his staff.

- c. The urine of SUDAN, collected after an Event in February 2009 in which the PR had been the rider, was found to contain Etorphine. Dr. Malton had testified that Etorphine was not used or kept at SAS and blamed the horse's groom, who had been dismissed and repatriated prior to the hearing and therefore was not available to testify. The PR was banned for ten months.
- d. The urine of AKASHA SANSATION, collected after a Competition in March 2011 in which the PR's brother had been the rider, was found to contain Diclofenac, a Controlled Medication. The PR's brother accepted a Fine and Disqualification.

38. The PR acknowledged on cross-examination that his previous Head Veterinarian at SAS, Mr. Contard, had left his employment at the stables on the very day that it is alleged that the Horse's medication was changed and the Testosterone propionate was administered to the Horse (allegedly as a contaminant of that medication). The PR said however that it was just a coincidence and that Mr. Contard had given his notice the previous month because he wanted to return to Argentina. Asked if he had contacted Mr. Contard once the adverse analytical finding was reported, to see if he could explain it or could recall administering Anartritico to the Horse, the PR said he had not, but had left such matters to Dr. Malton.

39. On the issue of whether or not the PR had respected the terms of his Provisional Suspension (by attending events only as a spectator, and not in any other capacity):

- a. The PR agreed that he had continued throughout to train the SAS horses while they were at the SAS stables.
- b. The PR acknowledged that he had been within the 'vet gate' area at an Endurance Event in Euston Park (Great Britain) in the summer of 2011. He said he had not actually passed through the veterinary check but was in front of that check, and that he was only there because his boss had asked him to come and advise how he thought his horse was looking, and he left as soon as Mr. Ian Williams approached him and explained that the vet gate was part of the field of play and therefore he was not allowed in there while provisionally suspended.
- c. The PR acknowledged that he had also attended several endurance races in Dubai in the 2011/12 winter season, including races at which horses that he trained at SAS were competing. He said that at those events he would accompany his assistant trainer (Mr. Rao) in a car around the loops following their horses, and in the vet gate area, and that where necessary he would remind the assistant

coach of the instructions he had given as to how the SAS horses and their riders were to approach the race. However, he said he never touched the horses or helped water them or anything like that.

- d. He acknowledged that at the FEI Endurance Event in Al Wathba, Abu Dhabi on 26 November 2011, where SAS horses came first and second in the race, he went onto the podium when the prizes were presented, but he said he did so at the invitation of the General Secretary of the UAE NF, who can be seen in the photograph¹ standing next to him on the podium, and so he did not think he was doing anything wrong.

40. Next Dr. Malton gave evidence. He testified that when he learned of the Horse's adverse analytical finding, he telephoned Mr. Contard in Argentina for assistance, but Mr. Contard had said he did not want to be involved in any way, and so Dr. Malton had not called him again, even when the issue arose of whether or not Anartritico had been administered to the Horse.

41. Dr. Bonavita testified that he had not contacted Mr. Contard to seek his input in explaining the adverse analytical finding. He said he and Mr. Contard had not been particularly close even though they were compatriots and so he had left that to Dr. Malton.

42. In response to a question from the PR's lawyer, the FEI Tribunal indicated that it did not need to hear further evidence on the welfare issue, i.e., whether it had been contrary to the Horse's welfare to treat it with Batacas and Anartritico. On that basis, the PR's lawyer agreed to not cross-examine Dr. Higgins, even though he was available for cross-examination by telephone.

43. Mr. Ian Williams testified how he had seen the PR in the vet gate at an Endurance Event at Euston Park (Great Britain) in the summer of 2011, and had told him that area was the 'field of play' and therefore the PR could not be there while provisionally suspended. He accepted on cross-examination that the PR had immediately left the area as requested.

44. In its closing statement, the FEI submitted that the PR had not shown that it was more likely than not that the Testosterone propionate that had been ingested by the Horse was in the medications administered to the Horse in January 2011. While the PR had shown that the samples of those medications collected by Dr. Dunnett from SAS in March 2011 were contaminated with Testosterone propionate, the PR had not established it was more likely than not that the medication administered to the Horse in January 2011 came from the same batches or was otherwise

¹ Page 26 of the FEI Submission.

contaminated. The PR had simply asked the FEI Tribunal to infer that from the fact of the positive test, which, according to the FEI, was not enough to satisfy the legal burden. And even if one assumed the medications given to the Horse were contaminated, the PR had not established that those batches were contaminated at source as opposed to later in the supply chain or at SAS themselves – noting the repeated failures in the controls and procedures supposedly followed at SAS, and the strange coincidence of Mr. Contard's departure from SAS at the very time when the Testosterone propionate supposedly got into the Horse, combined with his refusal to cooperate in the investigation of the Adverse Analytical Finding. However, even if one assumed that the medications administered to the Horse in January 2011 had been contaminated with Testosterone propionate at source, in the highest concentrations claimed by Dr. Dunnett (24 mg in total), the FEI submitted that the PR had still not discharged his burden of proving how the Testosterone found in the Horse's 5 February 2011 urine sample had got into the Horse's system. The explanation offered on behalf of the PR could not be right, because Professor James' expert evidence had established that the Testosterone propionate injected intravenously between 18-24 January 2011 would have been eliminated from the Horse's system within 24-48 hours of ingestion and so could not have had any impact on the concentration of Testosterone in the Horse's urine 18-12 days later. The fact that no one could identify what the cause of the adverse finding was did not mean the PR's explanation (though possible) had to be accepted; rather, it meant that the PR had failed to discharge the burden of proof upon him. Therefore, the EAD Rules Article 10.5 plea had to be rejected, a period of Ineligibility of 2-8 years had to be imposed, and no credit should be given against that period of Ineligibility for the Provisional Suspension because the PR had attended Events throughout the suspension period not just as a spectator but on the field of play, giving instructions as a trainer, and/or on the victory podium.

45. In response the PR's legal representative insisted that at best there was uncertainty as to the half-life of Testosterone propionate and Testosterone in blood, and that therefore it was not reasonable for Professor James to be as sure as he claimed to be that it was all eliminated from the system within 24-48 hours. The PR's legal representative said that no one knows (and the PR and his expert did not know) how long the Testosterone propionate and Testosterone would have stayed in the Horse's system, but insisted that that did not matter, that the PR had proven that at least 24 mg of Testosterone propionate had been injected into the Horse in the period of 18-24 January 2011, and the FEI Tribunal should find that that was the source of the adverse finding, because there was no other explanation. That constituted an adequate positive case that discharged the PR's burden of proving how the Testosterone had gotten into the Horse's urine sample. Alternatively, if the FEI Tribunal found the PR had not discharged his burden on that point, so that the EAD Rules Article 10.5 plea could not be upheld, the PR submitted that as matter of proportionality the period of Ineligibility imposed should be no more than two years, notwithstanding that this was the PR's second

offence. He also submitted that the PR had sought in good faith to comply with the terms of his Provisional Suspension and therefore should be given credit for that period of Provisional Suspension against any period of Ineligibility to be imposed by the FEI Tribunal.

4.5 Jurisdiction

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

4.6 The Person Responsible

47. 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.

4.7 The Decision

48. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both the HKJC and the ARFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone above the FEI threshold in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Testosterone – provided it is detected in a gelding's Sample at a level above the above threshold - is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

49. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with EAD Rules Article 3. This is undisputed.

50. 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 positive findings as set forth in EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

51. While the diaries of the veterinarian and the foreman provided by the PR do not show any administration of Anartritico to the Horse, the medical testing done on the Horse's hair samples demonstrate that at least all of the ingredients of Anartritico were present in the Horse. Therefore, the Tribunal finds that at least on this point, the PR has demonstrated by a balance of probability that the Horse was administered Anartritico during the relevant time period. The Tribunal also accepts that it is probable that the Anartritico administered to the Horse was contaminated.

52. The Tribunal then turns to the question of causation, which for the Tribunal represents the penultimate question to be addressed in this case. Could the Anartritico, even assuming it was contaminated at source and administered to the Horse from the batch containing the highest level of contamination (i.e. 24 mg of Testosterone propionate), have caused the positive finding of Testosterone at issue in this case?

53. The Tribunal was persuaded by Professor James' testimony that even 24mg of Testosterone propionate injected intravenously would have been eliminated from the Horse's system within 24-48 hours of ingestion and so could not have had any impact on the concentration of Testosterone in the Horse's urine 18-12 days later. Professor James' view that the half-life of Testosterone propionate in a horse is very short, in fact less than three hours, was persuasive as Dr Dunnett did not have any specific time estimates for the half-life of Testosterone propionate in a horse. Furthermore, Professor James' experience with anabolic steroids qualifies him as an expert in that regard. If the half life of Testosterone propionate is less than 3 hours, then even the most contaminated batch of Anartritico could not have caused the positive test result.

54. While there are many issues in this case that could be analysed, the Tribunal believes that ultimately this burden of "causation" cannot be met and therefore even if everything the PR is claiming was true, the contamination could not have caused the positive Testosterone finding. The Tribunal therefore finds that the PR did not establish how the Testosterone entered the Horse's system.

55. Accordingly, the Tribunal does not have to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of EAD Rules Article 10.5.1 or Article 10.5.2 should be applied.

56. Further, a violation of the EAD Rules in connection with a test conducted at a Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained at that Competition.

57. Turning to the PR's first violation, the Tribunal takes note that the PR's horse SUDAN tested positive in 2009 for Etorphine, a highly potent opiod analgesic which is a stimulant in small doses and is currently classified as a Banned Substance under the Equine Prohibited Substances List (and was a "Doping Prohibited Substance" under the predecessor rules applicable at the time.). The Tribunal further notes that the PR had been held negligent for the 2009 rule violation, and that a period of Ineligibility of ten (10) months had been imposed on him, as well as a fine of CHF 2,000 and legal costs. It has to be highlighted that the sanctions for anti-doping violations under the then applicable Anti-Doping system were far less severe than they are under the current scheme and therefore a ten (10) month Ineligibility Period reflected a significant penalty for that time.

58. Further, the evidence presented regarding the PR's lack of respect for the Provisional Suspension must be taken into account in order to determine whether the period of the Provisional Suspension should be credited against the final period of Ineligibility to be imposed in this case. The Tribunal finds that the PR's admissions are in and of themselves sufficient – without anything more – to demonstrate that the Provisional Suspension was not respected. First, the PR conceded that he had been within the 'vet gate' area at an Endurance Event in Euston Park (Great Britain) in the summer of 2011. Second, he admitted that he attended several Endurance Competitions in Dubai in the 2011/12 winter season where he would accompany his assistant trainer (Mr. Rao) in a car around the loops following their horses, and in the vet gate area, and that where necessary he would remind the assistant coach of the instructions he had given as to how the SAS horses and their riders were to approach the race. Third, he acknowledged that at the FEI Endurance Event in Al Wathba, Abu Dhabi on 26 November 2011, he went onto the podium when the prizes were presented and there was in fact a photograph in a local newspaper which confirmed this incident and which the FEI included in its submission in this case.

4.8 Disqualification

59. 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 EAD Rules Article 9.

60. Further, the FEI Tribunal is also disqualifying the PR's results obtained at all February 2011 Events in which he competed following the Event at issue in this case and prior to the imposition of the Provisional Suspension in accordance with EAD Rules Article 10.8.

4.9 Sanctions

61. Under the EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period for first time offenders. The case at hand is the PR's second rule violation although the first rule violation occurred under the predecessor Anti-Doping Rules. This follows from Article EAD Rules 10.7.4 which provides that: "For purposes of Article 10.7, each EAD Rule violation must take place within the same eight (8) year period in order to be considered multiple violations". As the first violation occurred in 2009, the Tribunal is bound to consider it in issuing its sanction in this case. Taking into account the severity of the first rule violation, the use of a highly potent opioid analgesic classified as a Doping Prohibited Substance at the time (and as a Banned Substance today) and the circumstances of the particular case, the FEI Tribunal imposes the following sanctions on the PR, in accordance with GRs Article 169 and EAD Rules Articles 10.2 and 10.7:

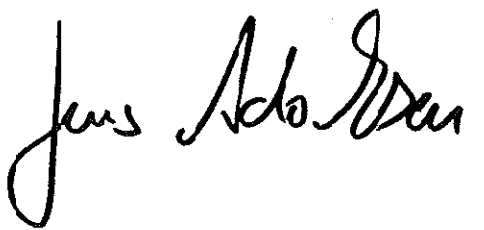
- 1) The PR shall be suspended for a period of **4 (four) years** to be effective immediately and without further notice from the date of the notification. For the reasons provided above at Paragraph 58, the period of Provisional Suspension, effective from 9 March 2011 to 21 March 2012, shall not be credited against the Period of Ineligibility imposed above. Therefore, the PR shall be ineligible through 21 March 2016.
- 2) The PR is fined **CHF 5000.-**.
- 3) The PR shall contribute **CHF 5000.-** towards the legal costs of the judicial procedure, as well as **US\$ 57.26** and **AUS\$ 3,928.86** as costs of the B-Sample analysis.

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

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", is written over a horizontal line. A vertical line extends downwards from the end of the signature.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen