

DECISION of the FEI TRIBUNAL

dated 21 August 2012

Positive Anti-Doping Case No.: 2011/BS16

Horse: SANTIAGO 218

FEI Passport No: 103IM18

Person Responsible/NF/ID: Alexander Kernebeck/GER/10047452

Event/ID: CH-M-YH-S, Lanaken (Belgium)/2011_CH_M_0004_S_YH_01_04

Date: 22 - 25 September 2011

Prohibited Substance: Boldenone (Banned Substance)

1. COMPOSITION OF PANEL

Ms. Randi Haukebó, Chair

Mr. Patrick A. Boelens, Panel member

Mr. Vladan Jevtic, Panel 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

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23rd edition, effective 5 May 2011 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1, 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, update 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: Alexander Kernebeck

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. SANTIAGO 218 (the "Horse") participated at the CH-M-YH-S in Lanaken, Belgium, from 22 to 25 September 2011 (the "Event"), in the discipline of

Jumping. The Horse was ridden by Mr. Alexander Kernebeck, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "PR").

2. The Horse was selected for sampling on 25 September 2011. According to the Medication Control Form of 25 September 2011, the Horse is a gelding.

3. Analysis of urine and blood sample no. FEI- 5508874 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. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Boldenone (Certificate of Analysis no. 70807 dated 18 October 2011).

4. The Prohibited Substance detected is Boldenone. Boldenone is an anabolic steroid, the use of which may lead to increase in muscle growth. It is the Tribunal's understanding that Boldenone can be endogenously produced in stallions, and that therefore, a threshold applies to Boldenone detected in male horses other than geldings. The Tribunal further understands that the presence of any quantity of Boldenone detected in a gelding's bodily system is prohibited, and that Boldenone detected in a gelding's system is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Therefore, the positive finding of Boldenone in the Horse's sample constitutes an Anti-Doping rule violation.

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 8 November 2011, through the Deutsche Reiterliche Vereinigung ("GER-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. The PR did not request a Preliminary Hearing.

4.3 The B-Sample Analysis

6. The PR was also informed in the Notification Letter of 8 November 2011 that he was entitled to: (i) the performance of a 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.

7. The PR confirmed on 9 November 2011 that he wished for the B-Sample analysis to be performed, and requested that the B-Sample analysis be performed in a different laboratory than the A-Sample analysis. The PR further

confirmed that he wished to be present at the identification and opening of the B-Sample and that he further wished for Mr. Lars Ebbing to also attend the identification and opening of the B-Sample.

8. The B-Sample analysis was performed on the urine from 29 to 30 November 2011 at the Laboratoire des Courses Hippiques, France ("LCH"), an FEI-accredited laboratory, under the supervision of Dr. Yves Bonnaire, Director of the LCH.

9. The PR and Mr. Ebbing attended the identification and opening of the B-Sample.

10. In their witness statements, the PR and Mr. Ebbing 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 Laboratoire des Courses Hippiques (LCH) corresponds to that appearing on the collection documentation accompanying the sample".

11. The B-Sample analysis of the urine confirmed the presence of Boldenone (B Sample Analysis Report dated 30 November 2011).

12. The results of the B-Sample analysis were notified to the PR on 2 December 2011, through the GER-NF.

4.4 The Further Proceedings

13. By fax of 23 December 2011, Counsel for the PR submitted that – following receipt of the results of the B Sample analysis – the PR no longer had any doubt about the presence of the Prohibited Substance. That he had however no explanation as to how the Prohibited Substance had entered the Horse's system. The PR further argued that it was not possible to purchase Boldenone in Germany, but that the substance was very common in Belgium, where the Event had taken place. The PR further submitted that he was a steal worker by trade, that he had no experience at all with Prohibited Substances, and had never personally administered any medication to a horse. Together with his submission, the PR also provided a statement by his veterinarian, Dr. Ulrich Kruse, who confirmed that the Horse had never been administered any Boldenone by him. Dr. Kruse further confirmed that Boldenone was not available on the German market, and did not have the potential to rapidly enhance performance.

14. On 9 March 2012, the FEI provided its response to the PR's submission. In essence, the FEI argued that:

- a) Since the PR had not disputed that Boldenone was present in the Sample collected from the Horse at the Event, it had discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
- b) No elimination or reduction under Article 10.5 of the EAD Rules should be applied since the evidence adduced by or on behalf of the PR did not establish how the Banned Substance had entered the Horse's system. The FEI argued that in order to assess Fault or Negligence for the rules violation, it was a prerequisite to know how the Prohibited Substance entered into the Horse's system. The FEI highlighted that a mere denial of any administration of Prohibited Substances was not sufficient to discharge the PR of his burden of proof under Article 3.1 of the EAD Rules. Lastly that no evidence had been provided as to how the PR ensured that no Banned Substances came to be present in the Horse's system. In conclusion, the FEI requested that a period of Ineligibility of two (2) years be imposed on the PR in accordance with Article 10.2 of the EAD Rules, without any elimination or reduction under Article 10.5 of the EAD Rules. The FEI further requested that in addition to the automatic disqualification of the Horse's results at the Competition under Article 9 of the EAD Rules, all results obtained by the PR at the Event together with the Horse should be disqualified, in accordance with Article 10.1 of the EAD Rules.

15. By fax of 18 April 2012, the PR provided further explanations. He submitted that:

- a) He generally took care himself of the Horse and his other five (5) horses, supported only by his family when he competed at shows. That no other veterinarian other than Dr. Kruse had treated the Horse and that therefore outside interference was his only "reasonable suspicion" for the presence of the Prohibited Substance in the Horse's system. He further argued that the Horse was properly muscled and in good shape, and that therefore no "support" would be needed to improve the Horse's performance.
- b) He had never been in conflict with alcohol, drugs or any illegal line of action and that in the summer of 2011, he had established a midjet horse training centre.
- c) Although not feeling personally guilty, he would accept legal and procedural actions of the FEI, promising at the same time to improve the surveillance of his horses. In conclusion, he pleaded for a moderate sanction, as a two year ban would jeopardize his personal development and his professional life.

4.5 Jurisdiction

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

4.6 The Person Responsible

17. 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

18. 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 HFL and the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Boldenone 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. Boldenone – detected in a gelding's sample – is classified as a Banned Substance under the FEI Equine Prohibited Substances List.

19. 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. This is undisputed between the Parties.

20. 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" or "No Significant Fault or Negligence" for the positive findings as set forth in Articles 10.5.1 and 10.5.2 of the EAD Rules. In line with several previous decisions (FEI Case 2008/23 – CAMIRO, Final Tribunal Decision dated 22 December 2008) and Court of Arbitration for Sport (CAS) case law (CAS 2010/A/2230 – IWBf v. UKAD & GIBBS, Final Award dated 22 February 2011), the Tribunal holds that in order to successfully arrive at any elimination or reduction of the otherwise applicable period of Ineligibility, the PR must establish how the Prohibited Substance entered the Horse's system. This element is a "prerequisite" to the application of Article 10.5. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability". The Tribunal finds that the PR has not established, by a "balance of probability", how the Boldenone had entered the Horse's system. The PR did not provide any evidence to this extent, and even admitted that he did not have any explanation for the Boldenone, and could only speculate about possible third party interference. Furthermore, since the PR himself suggested improving the surveillance of his horses, the Tribunal presumes that such necessary

precautions have not been taken especially since no evidence of such precautions has been presented.

21. Accordingly, the prerequisites for eliminating or reducing the otherwise applicable period of Ineligibility have not been established, and therefore, the Tribunal does not have to address the question whether the further prerequisites of Article 10.5.1 or Article 10.5.2 of the EAD Rules have been met. However, even if the Tribunal accepted that the PR had established how the Boldenone had entered the Horse's system, the Tribunal finds that the PR does not succeed in taking the second step to reduce the otherwise applicable sanctions, i.e. to establish that he bears No (Significant) Fault or Negligence for the rule violation. The Tribunal therefore decides that no elimination or reduction of the otherwise applicable sanctions is applicable.

4.8 Disqualification

22. 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. The Tribunal is further disqualifying all other results obtained by the PR together with the Horse at the Event, in accordance with Article 10.1 of the EAD Rules.

4.9 Sanctions

23. 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 FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 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 8 November 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible through 7 November 2013.
- 2) The PR is fined **CHF 1'500.**
- 3) The PR shall contribute **CHF 1'000** towards the legal costs of the judicial procedure, as well as **EUR 550** as costs of the B-Sample analysis.

24. No 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.

25. 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.

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

5. DECISION TO BE FORWARDED TO:

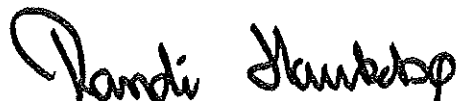
5.1 The person sanctioned: Yes

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, appearing to read "Randi Haukebo". The signature is fluid and cursive, with the first name "Randi" and last name "Haukebo" clearly distinguishable.

THE CHAIRWOMAN, Ms. Randi Haukebo