



DECISION of the FEI TRIBUNAL

dated 13 October 2011

Positive Anti-Doping Case No.: 2011/01

Horse: CHANEL

FEI Passport No: HUN 102PK29

Person Responsible: János Sebok / HUN

Event: CSI2*-W, Budapest, HUN

Prohibited Substance: Morphine (Banned Substance)

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Erik Elstad, member
Mr. Philip O'Connor, 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 22nd edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

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

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

updated 1 February 2008.

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

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

Veterinary Regulations ("**VRs**"), 12th edition, effective 5th April 2010, 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: János Sebok

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, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

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. CHANEL (the "**Horse**") participated at the CSI2*-W in Budapest, HUN, from 3 to 5 December 2010 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. János Sebok, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 4 December 2010.
3. Analysis of the urine and blood sample no. FEI-5504803 taken from the Horse at the Event was performed at the FEI approved laboratory, the HFL – Sport Science Ltd. Laboratory (UK), by Ms. Selina Hines, Senior Scientist, under the supervision of Mr. Clive Pearce, Sport Service Manager. The analysis of the urine sample revealed the presence of Morphine (Certificate of Analysis n° 65717 dated 16 December 2010).

4. The Prohibited Substance detected is Morphine. Morphine is an opioid analgesic, used for pain relief. Morphine is categorized by the FEI as a *Banned Substance*. Therefore, the finding of Morphine in the Horse's sample constitutes an *Anti-Doping* rule violation.

4.2 The Proceedings

5. On 12 January 2011, the FEI Legal Department notified the PR, through the Hungarian Equestrian Federation ("HUN NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. 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.
6. A Preliminary Hearing took place on 14 January 2011. The PR was represented during the Preliminary Hearing by his private veterinarian, Dr. Balázs Burucs, who reported that the PR did not have any explanation as to how the Morphine had entered into the Horse's system, and contended that the PR did not have any intent to dope the Horse. Further, that it was difficult to purchase Morphine in Hungary, and that other pain killers could have been used more easily. That therefore, only contamination of the Horse's food or hay could be the possible reason for the positive test result.
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 12 January 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. The PR confirmed on 14 January 2011 that he wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
10. The B-Sample analysis was performed on urine on 25 and 26 January 2011 at the Laboratoire des Courses Hippiques, France ("LCH"), a FEI-accredited laboratory, by Ms. Isabelle Pottier, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director.
11. The PR did not attend the B-Sample analysis and did not request for a representative to be present during the analysis. Therefore, Mr. Frédéric Balssa, Quality Manager at LCH, witnessed the

opening and identification of B-Sample no. 5504803.

12. In his witness statement, Mr. Balssa 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 LCH corresponds to that appearing on the collection documentation accompanying the sample"*.
13. The B-Sample analysis of the urine confirmed the presence of Morphine (Certificate of Counter Analysis N° 5504803 dated 27 January 2011).
14. The results of the B-Sample analysis were notified to the PR on 3 February 2011, through the HUN NF.

4.4 The Further Proceedings

15. On 20 January 2011, the PR, through the HUN NF, submitted a letter explaining that the last treatment of the Horse had taken place in the first half of June 2010, at the Major Animal Clinic in Üllő, and that anti-doping tests taken from the Horse afterwards had given negative results. That the Horse was a very balanced, totally calm-blooded, young 8-year old mare that did not need tranquillisers, and that he had not intentionally doped the Horse. The PR explained further that he intended to have the urine of all horses in the Horse's stable being tested, in order to find out the source of the Prohibited Substance.
16. By email of 15 February 2011, the PR reported that the urine tests performed by him on the Horse as well as the other horses in the stable had led to negative test results. The PR further stated that a DNA map had been prepared from the Horse's blood, and requested that the FEI prepare a DNA map from the blood sample taken from the Horse at the Event, in order to make sure that the blood sample received by the FEI from the Event was of CHANEL. Lastly, the PR, referring to "the steady opinion of many veterinarians", contended that Morphine did not have any "predictable effect" when administered to horses.
17. By letter of 24 February 2011, the FEI rejected the PR's request for the DNA map, stating that a DNA map was not part of the established FEI Doping Control protocol and that it was not provided for under FEI Rules. The FEI further explained that the sampling process established by the FEI Rules is designed to ensure that there is no doubt about the identity of the horse sampled. That specifically, at the time of testing, the Horse's identity had been established by verifying its passport, and that the samples taken from the Horse had been labeled with specific numbers, and that the Medication Control Form used for the Horse at the time of testing contained stickers with the same number.

18. By email of the FEI to the HUN NF of 28 March 2011, the FEI stated that the PR had not submitted any explanations within the deadline given, and that the deadline was extended until 4 April 2011 at the latest.
19. By email of 4 April 2011, the PR stated having contacted many veterinarians about his case, but that no one could provide him with information about products which contain Morphine and how it could enhance performance in horses.
20. On 9 May 2011, the PR for a second time requested the lifting of the Provisional Suspension. In support of his request, the PR explained that he made his living from riding, and that – due to the Provisional Suspension – he had lost his former job at the beginning of May 2011.
21. On 17 May 2011, the Tribunal issued its Preliminary Decision on the second request to lift the Provisional Suspension, rejecting the request and maintaining the Provisional Suspension. The Tribunal held that the request for the lifting had to be interpreted as a request for a second Preliminary Hearing as provided under Article 7.4.3 of the EAD Rules. That however the prerequisites of Article 7.4.3 of the EAD Rules were not fulfilled as the PR had not presented any new evidence which, if known at the time of the Preliminary Hearing, may have led to the lifting of the Provisional Suspension, and that the PR had not established that there was a likelihood of success on the merits and that the continuation of the Provisional Suspension would cause undue harm or prejudice to the Person Responsible.

4.5 Jurisdiction

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

4.6 The Person Responsible

23. 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

24. 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 HFL and LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Morphine which is classified as a Banned Substance, 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. With regards to the PR's request for the DNA map of the blood sample taken from the Horse at the Event, the

Tribunal takes note that following the FEI's explanation of 24 February 2011, the PR did not contest the sampling process, or raise any other doubts about the identity of the Horse. 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. The Prohibited Substance found in the sample is classified as a "Doping" Prohibited Substance.

25. In Doping and Medication cases, 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.
26. 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*".
27. The Tribunal finds however that the PR has not established by a "*balance of probability*" how the Morphine entered the Horse's system. The tests performed by the PR following the Event on the Horse and the other horses stabled together with the Horse returned negative. The PR did not provide any substantive explanation or evidence about potential food or hay contamination causing the positive test result. Therefore, there has been no reliable evidence presented on how the Morphine entered the Horse's system.
28. Accordingly, the Tribunal is not required to address the question whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.5.1 or Article 10.5.2 of the EAD Rules should be applied. However, the arguments brought forward by the PR in this context would not lead to a finding of No (Significant) Fault or (Significant) Negligence either. To start with, due to the strict liability principle applicable in anti-doping and medication cases involving a positive finding, it does not matter whether the PR had intended the rule violation. Therefore, the PR's argument that he did not intend to dope the Horse, does not have any influence on the establishment of the rule violation. Furthermore, and as stipulated in Article 4.3 of the EAD Rules, the categorisation by the FEI of a substance in the List as a Banned Substance shall be final and binding, and therefore it is irrelevant for the decision at hand whether or not, and to which extent, Morphine has a performance enhancing effect.

29. According to Article 9 of the EAD Rules, 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.

30. 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

31. 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 at that Competition must be forfeited, in accordance with Article 9 of the EAD Rules.

4.9 Sanctions

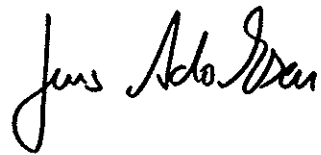
32. Under the currently applicable EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 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 12 January 2011 to 13 October 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 11 January 2013.
- 2) The PR is fined **CHF 1000.-**.
- 3) The PR shall contribute **CHF 1000.-** towards the legal costs of the judicial procedure, as well as **EUR 500,00.-** as costs of the B-Sample analysis.

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 "Jens Adolphsen". The signature is written in a cursive style with a large initial 'J'.

THE CHAIRMAN, Prof. Dr. Jens Adolphsen