



DECISION of the FEI TRIBUNAL

dated 12 November 2012

Positive Controlled Medication Case No.: 2012/CM06

Horse: MANDIJI

FEI Passport No: 102MT21

Person Responsible: Ahmad Ali Humaid Al Razzi/UAE/10072441

Event: CEI3*-160km – Abu Dhabi, Al Wathba (UAE)/2012-CI_0363_E_S_01_01

Date: 10 – 11 February 2012

Controlled Medication Substances: Clenbuterol, Flunixin, Phenylbutazone, Oxyphenbutazone

I. COMPOSITION OF PANEL

Mr. Henrik Arle (one member panel)

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR):
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

3. Oral hearing: none; by correspondence.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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

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

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

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

FEI Equine Controlled Medication Rules ("ECM Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ahmad Ali Humaid Al Razzi

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)".

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an *Event*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 *ECM Rules* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

IV. DECISION

1. Factual Background

- 1.1 MANDIJI (the "Horse") participated at the CEI3*-160km in Abu Dhabi, Al Wathba, in the United Arab Emirates, from 10 to 11 February 2012 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Ahmad Ali Humaid Al Razzi, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 11 February 2012. The Testing Veterinarian, Dr. Elke Peperkorn, noted on the FEI Medication Control Form that a Steward had seen a veterinarian injecting in the right hind hoof joint of the Horse.

- 1.3 Analysis of the urine and blood sample no. FEI-5513161 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club ("HKJC"), in Hong Kong, China by Dr. Wai Him Kwok, Chemist, under the supervision of Dr. Terence See Ming Wan, Chief Racing Chemist. The analysis revealed the presence of Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone in the urine and blood sample (Certificates of Analysis 12-0261 and 12-0260 dated 27 February 2012).
- 1.4 The Prohibited Substances detected are Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone. Clenbuterol is a bronchodilator that increases respiratory functions by opening the airways. Flunixin, Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and pain relief effect. Oxyphenbutazone is a metabolite of Phenylbutazone. All four substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") had been provided by the PR for the use of the substances on the Horse. Therefore, the positive findings for Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone in the Horse's sample at the Event give rise to a Controlled Medication Rule violation under the EADCMRs.
- 1.6 Under the ECM Rules, in cases of Controlled Medication Substances, a PR may elect the so-called "Administrative Procedure" (also referred to as "Fast-Track"), provided that the prerequisites of Article 8.3.1 of the ECM Rules are fulfilled. However, the case at hand is not eligible for the Administrative Procedure insofar as more than one Controlled Medication Substance had been detected in the Horse's sample.

2. The Proceedings

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the United Arab Emirates Equestrian & Racing Federation ("UAE-NF"), by the FEI Legal Department on 27 March 2012. Together with the Notification Letter of 27 March 2012, the PR received the Laboratory Documentation Package (A-Sample) for the positive sample by the FEI Legal Department.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 27 March 2012, the PR was also informed that he was entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 11 April 2012, the PR waived his right to have the B-Sample confirmatory analysis performed.

4. The Further Proceedings

- 4.1 On 10 April 2012, Dr. Hallvard Sommerseth, Veterinarian of the UAE-NF, explained that the Horse had not finished the Event, and that the Horse had been selected for sampling after a Steward had seen someone treating the Horse in a hold period. In addition, Dr. Sommerseth informed the FEI that the PR wished to forego a Hearing.
- 4.2 On 11 April 2012, the PR himself submitted that he did not wish to provide any explanations regarding the positive findings. He further informed the FEI that in the past he had ridden for different stables in the United Arab Emirates.

5. Jurisdiction

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

6. The Person Responsible

- 6.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he competed with the Horse at the Event.

7. The Decision

- 7.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of

Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone 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. Clenbuterol, Flunixin, Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substances on the Equine Prohibited Substances List.

- 7.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 7.3 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM 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 Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.
- 7.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".
- 7.5 The Tribunal takes note of Dr. Sommerseth's explanations, as well as Dr. Peperkorn's remarks, both stating that a Steward had seen a veterinarian treating the Horse. The Tribunal however finds these explanations very vague, in particular since no details are provided regarding the identity of the Steward who allegedly observed the administration, the veterinarian, the substances administered or the circumstances of the administration. The Tribunal further takes note that the PR himself does not provide any information regarding the alleged administration, and therefore holds that the PR has not established by a "balance of probability" how the Controlled Medication Substances entered the Horse's system. Accordingly, the Tribunal would not have to address the question whether the PR had established in accordance with Article 10.4.1 or Article 10.4.2 of the ECM Rules, that he did not bear any Fault or Negligence for the Rule violation. Furthermore, in line with its previous decision (FEI Case 2011/CM01 – CAMEO RENAZAR, Final Tribunal Decision dated 21 November 2011) the Tribunal finds that the degree of Fault or Negligence of the PR is difficult to assess given the limited amount of information provided. The Tribunal therefore holds that no reduction or elimination of the otherwise applicable period of Ineligibility is granted.

- 7.6 In deciding the sanctions, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility. Since the Tribunal finds that the PR failed to prove how the Controlled Medication Substances entered the Horse's system, it is not possible for the Tribunal to assess the PR's Fault or Negligence for the Rule violation. Therefore, the Tribunal is forced to take into account other, more objective factors in order to determine the period of Ineligibility.
- 7.7 In deciding the sanctions, the Tribunal considers the level of the Event in question and the fact that three Controlled Medication Substances and one of its metabolites had been detected in the Horse's sample. Further, the PR has not actively cooperated with the investigation, and has not provided any information on stable management or reasons for administration of the Controlled Medication Substances. The Tribunal therefore does not find any basis for reducing the sanction.

8. Disqualification

- 8.1 For the reasons set forth above, the 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 ECM Rules.

9. Sanctions

- 9.1 The FEI Tribunal imposes the following sanctions on the PR, in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

- 1) The PR shall be suspended for a period of **ten (10) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **11 September 2013**.
- 2) The PR is fined **CHF 1000.-**.
- 3) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

- 9.2 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 authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any

international or national-level Event organisation (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

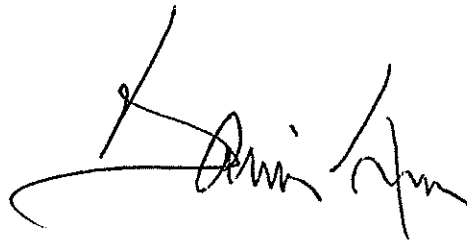
9.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

9.4 In accordance with Article 12 of the ECM Rules, the PR may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes
- b. The President of the NF of the person sanctioned: Yes
- c. The President of the Organising Committee of the Event through his NF: Yes
- d. Any other: No

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Henrik Arle', is written over a horizontal line.

THE CHAIRMAN, Mr. Henrik Arle