ABRIDGED DECISION
Made by the FEI Tribunal on 28 March 2014

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")

vs.

HH Sheik Hazza bin Sultan bin Zayed Al Nahyan

(Collectively "The Parties")

Positive Anti-Doping Case No.: 2012/BS01

Horse: GLENMORGAN FEI Passport No: UAE40813

Person Responsible: HH Sheik Hazza bin Sultan bin Zayed Al Nahyan

NF/ID: UAE/10014761

Event/ID: CEI3* 160 km, Abu Dhabi, Al Wathba (UAE), 2012_CI_0363_E_S_01

Date: 10 February 2012

Prohibited Substance: Propoxyphene

I. COMPOSITION OF PANEL

Dr. Armand Leone, Chair
Mr. Vladan Jevtic, Panel Member
Mr. Pierre Ketterer, Panel Member
II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Submissions and Evidence before the Tribunal: 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.


III. DECISION

1. Factual Background

1.1 GLENMORGAN (the “Horse”) participated at the CEI3* 160 km in Abu Dhabi, Al Wathba, United Arab Emirates, on 10 February 2012 (the “Event”), in the discipline of Endurance. The Horse was ridden by HH Sheik Hazza bin Sultan bin Zayed Al Nahyan who is the Person Responsible in accordance with Article 118.3 of the GRs (the “PR”).

1.2 The Horse was selected for sampling on 11 February 2013.

1.3 Analysis of blood sample no. 5513146 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory (“HKJC”) by Mr. Colton Ho Fai Wong, Chemist under the supervision of Ms. Emmie Ngal Man Ho, Racing Chemist. The analysis of the sample revealed the presence of Propoxyphene and Norpropoxyphene.

1.4 The Prohibited Substance detected is Propoxyphene. Propoxyphene is an opiate analgesic, used for the treatment of pain. Norpropoxyphene is a metabolite of Propoxyphene. Propoxyphene is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Therefore, the positive finding for Propoxyphene in the Horse’s sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. Abridged Summary of the Proceedings

2.1 On 12 March 2012, the FEI Legal Department officially notified the PR, through the United Arab Emirates Equestrian & Racing Federation (“UAE-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. In the Notification Letter, the PR was also informed that due to the fact that he had been held responsible in 2005 for an Anti-Doping Rule violation with the horse HACHIM (CAS 2005/A/895 – Arbitral Award 9 March 2006), 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 and taking into
account the respective severity of both EAD Rule violations and the circumstances of the particular case.

2.2 The Notification Letter further included notice to the owner of the Horse, that in accordance with Article 7.4 of the EAD Rules, the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, i.e. 12 March 2012, until 11 May 2012. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

2.3 Upon request by the PR, a Preliminary Hearing took place on 2 April 2012. During the Preliminary Hearing, the PR explained that he did not have any explanations regarding the source of the Propoxyphene, but that a thorough investigation had been launched at the stable of the Horse, in order to determine the source of the positive test result. Following the Preliminary Hearing, the Preliminary Panel decided that the presence of a Prohibited Substance in the Horse’s sample was not questionable, and therefore the Provisional Suspension was maintained.

2.4 The B-Sample analysis confirmed the presence of Propoxyphene and Norpropoxyphene. The results of the B-Sample analysis were provided to the PR by the FEI Legal Department through the UAE-NF on 24 April 2012.

3. The Parties’ Submissions (abridged)

3.1 It is undisputed between the Parties that a violation of Article 2.1 of the EAD Rules has been established by the FEI.

3.2 As regards the source of the Prohibited Substance, the PR contended that only the use of a product called FUSTEX, produced by Chinfield S.A., could have possibly caused the positive result. In this context the PR argued that while the substance Propoxyphene was not listed as ingredient on the product label of FUSTEX, his investigations had shown that the product FUSTEX did contain Propoxyphene.

3.3 A sample of the product FUSTEX - ordered by the FEI from Chinfield S.A. and directly delivered to the Horseracing Forensic Laboratory ("HFL") - had been analysed by HFL, and had revealed the presence of Propoxyphene. Furthermore, Dr. Terrence See Ming Wan, Director of the HKJC explained that in 2009, the HKJC had been requested by a forensic laboratory in Abu Dhabi to analyse a sample of FUSTEX, and that at the time of that analysis, the FUSTEX sample had led to a positive finding for Stanozolol.

3.4 The FEI argued that – provided that the vial of FUSTEX administered to the Horse prior to the Event contained the same content as the sample of FUSTEX analysed by HFL - the FUSTEX administered to the Horse could have caused the positive finding. That however given the circumstances it was not excluded with certainty that the vial actually administrated to the Horse had not contained other substances, such as Stanozolol.
3.5 The PR contented that due to the strict liability rule he might be at fault by virtue of the Prohibited Substance found in the Horse’s system. That however, he had not been negligent, as he had put stringent procedures in place with the aim to prevent contamination, and that despite his best endeavours to preclude contamination, the drug had ended up in the Horse’s system. The PR therefore argued that any sanction should be reduced significantly from the proposed two years period of Ineligibility. That, as a matter of natural justice, it would be unfair to increase the sanction in the case at hand taking into consideration the PR’s disqualification in 2005, as a different system of sanctions had applied at the time.

3.6 With regards to Fault and Negligence for the rule violation the FEI argued that the substance listed as the product’s main ingredient, Paradiphenbutirate, was an unknown chemical term, and that according to the manufacturer of FUSTEX, Paradiphenbutirate had been listed and used as synonymous of Dextropropoxyphene. That Dr. Syed Kamaal Pasha – the veterinarian administering the product FUSTEX to the Horse - had therefore acted highly negligently and with the intention of enhancing the Horse’s performance. Further, the FEI argued that competitors were responsible for their staff and the care given to their horses by support personnel, and that therefore any fault or negligence of the support personnel was attributable to the PR.

3.7 The FEI argued that therefore, in accordance with Article 10.2 of the EAD Rules, a period of Ineligibility of two years should be imposed on the PR, without any elimination or reduction under Articles 10.4 or 10.5, and that further, the Tribunal had to take into account the first violation as aggravating circumstances as set forth in Article 10.6 of the EAD Rules. With regards to the Controlled Medication case of 2005 involving the horse HACHIM, the FEI argued that the 2005 Anti-Doping Rule violation by the PR had been unequivocally established, and that the fact that no suspension had been imposed on the PR at the time was not relevant and did not justify the first violation not to be considered in determining sanctions in the case at hand.

4. The Abridged Decision

4.1 The Tribunal holds that the FEI has established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence in accordance with Articles 2.1 of the EAD Rules.

4.2 The Tribunal takes into account that the sample of FUSTEX analysed by HFL in February 2014 had revealed the presence of Propoxyphene. In addition, the Tribunal takes note of the confirmation by the manufacturer of FUSTEX, that FUSTEX does indeed contain Dextropropoxyphene. At the same time the Tribunal takes into account Dr. Wan’s explanation, i.e. that analysis of another sample of FUSTEX had led to a positive finding for Stanozolol in 2009. As a result, there is no certainty whether the product FUSTEX given to the Horse in 2012 prior to the Event contained the Prohibited Substance.
Propoxyphene. Given the circumstances, and furthermore in light of the fact that the Tribunal does not find that the PR has established that he bears No Significant Fault or Negligence for the rule violation (see below) the Tribunal need not decide whether or not the PR has established, by “a balance of probability” as required under Article 3.1 of the ECM Rules, that the positive test result had been caused by the product FUSTEX containing the substance Propoxyphene.

4.3 With regards to the question of Fault or Negligence for the rule violation, the Tribunal finds that Dr. Pasha had been highly negligent. Whereas the Tribunal acknowledges that the PR had put in place “stringent procedures” with the aim to prevent any contamination or positive testing, the Tribunal finds that at the same time, these procedures had apparently not been followed in the case at hand, for example with respect to the acquisition and storage or the product FUSTEX. Nor had an all-surrounding check whether the product was “race allowed” been conducted, as Dr. Pasha had only performed a minimum check, limited to the consultation of the product’s leaflet and the oral feedback by a fellow veterinarian. The Tribunal therefore finds that Dr. Pasha had been clearly negligent when using a product unknown to him.

4.4 The Tribunal has also taken note of Dr. Pasha’s statement that he had administered 1cc of FUSTEX as a “pick me up” to the Horse after the Horse had completed its pre-race training on the day prior to the Event, intending to help the Horse relax after a hard pre-race training. The Tribunal therefore believes that Dr. Pasha had intentionally used the product FUSTEX, in order to enhance the Horse’s performance.

4.5 Further, the Tribunal holds that the negligence of Dr. Pasha is attributable to the PR in the case at hand.

4.6 The Tribunal therefore finds that the PR has not succeeded in establishing that he bears No (Significant) Fault or Negligence for the rule violation.

4.7 Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Article 10.5.1 or Article 10.5.2 of the EAD Rules.

4.8 In accordance with Article 169 of the GRs and Articles 10.2, 10.7 and 10.6 of the EAD Rules, the Tribunal is imposing a period of suspension of **two (2) years** on the PR for the present rule violation. Furthermore, and under Article 10.7 read together with Article 10.6 of the EAD Rules, the Tribunal is imposing an additional period of **three (3) months** of Suspension on the PR, for the 2005 violation. The Tribunal further holds that the period of Provisional Suspension, effective from 12 March 2012, the date of the imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **through 11 June 2014**.

4.9 Based upon its findings 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 EAD Rules.
4.10 A fully reasoned Decision, including a finding on costs, shall be issued accordingly, pursuant to Article 19.45 of the Internal Regulations of the FEI Tribunal.

4.11 This Decision can be appealed before the Court of Arbitration for Sport (CAS) within 30 days of the present notification.

FOR THE PANEL

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THE CHAIR, Dr. Armand Leone