



DECISION of the FEI TRIBUNAL

dated 8 August 2013

Positive Anti-Doping Case No.: 2013/BS02

Horse: CELENTANO 34

FEI Passport No: 103BR89

Person Responsible/NF/ID: Amke Stroman/GER/10012163

Support Personnel/NF/ID: Ralf Litz/GER/10002589

Event/ID: CSI4*, Braunschweig (GER), 2013_CI_0169_S_S_01

Date: 16 March 2013

Prohibited Substances: Nandrolone, Estranediol: 5alpha-estrane-3 beta, 17alpha-diol

I. COMPOSITION OF PANEL

Mr. Pierre Ketterer, Chair
Mr. Vladan Jevtic, Panel Member
Mr. Henrik Arle, Panel Member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR) and the member of the Support Personnel: 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 and the member of the Support Personnel.

3. Oral hearing: 11 June 2013 – FEI Headquarters, Lausanne

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Amke Stroman, PR
Mr. Ralf Litz, Support Personnel
Dr. Monika Gattiker, Legal Counsel
Dr. Jürgen Weyers, Legal Counsel
Ms. Tanja Willhardt, Witness (by telephone)
Ms. Karin Stroman, Witness (by telephone)
Mr. Michael Hechtner, Witness (by telephone)
Dr. Marco Müller-Dörr, Witness (by telephone)
Ms. Elke Lefrançois-Dombek, Interpreter

For the FEI:

Ms. Lisa Lazarus, FEI General Counsel
Ms. Carolin Fischer, FEI Legal Counsel

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 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 143.1, 161, 168 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 2013.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2013, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Amke Stroman

3. Support Personnel: Mr. Ralf Litz

4. 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."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the Final Hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 CELENTANO 34 (the "Horse") participated at the CSI4* in Braunschweig, Germany from 14 to 17 March 2013 (the "Event"), in the discipline of Jumping. The Horse was ridden by Ms. Amke Stroman 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 16 March 2013.
- 1.3 Analysis of urine and blood sample no. 5517838 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory Sport Science Ltd. (UK) ("HFL"). The analysis of the urine sample revealed the presence of Nandrolone and Estranediol: 5alpha-estrane-3 beta, 17alpha-diol (Certificate of Analysis no. 81357 dated 10 April 2013).
- 1.4 The Prohibited Substances detected are Nandrolone and Estranediol. Nandrolone and Estranediol are both anabolic steroids that increase appetite and therefore stimulate weight gain and muscle development. A threshold concentration of free and conjugated 5alpha-estrane-3 beta, 17alpha-diol in urine for male horses, other than geldings, of 0.0245 micrograms per millilitre has been implemented by the FEI in its anti-

doping policy. However, according to the Horse's data, it is a gelding, and therefore the above threshold does not apply. Nandrolone and Estranediol, provided they are detected in a horse's sample, are classified as Banned Substances under the FEI Equine Prohibited Substances List. Therefore, the positive findings for Nandrolone and Estranediol in the Horse's sample gives rise to an Anti-Doping Rule Violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 17 April 2013, the FEI Legal Department officially notified the PR, through the Deutsche Reiterliche Vereinigung ("GER-NF"), of the presence of the Prohibited Substances 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 her the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 2.2 The Notification Letter further included notice to the owner of the Horse that the Horse was provisionally suspended for a period of two (2) months.
- 2.3 Upon request by the PR, a Preliminary Hearing took place on 24 April 2013. During the Preliminary Hearing, the PR did not deny that the Banned Substances Nandrolone and Estranediol had been detected in the Horse's Sample. However she argued that Estranediol was only a metabolite of Nandrolone, and that therefore only one Banned Substance (not two) had been found in the Horse's Sample. Following the Preliminary Hearing, the Preliminary Panel decided that the presence of a Prohibited Substance in the Horse's Sample had not been denied, and therefore the Provisional Suspension was maintained.

3. The B-Sample analysis

- 3.1 During the Preliminary Hearing the PR waived her right to have the B-Sample analysed.

4. The PR's written submissions

- 4.1 The PR explained that she had been a professional show jumper at the highest level for the last 15 to 16 years, that she had a considerable list of FEI results since 2010, and that she had achieved a number of those results with the Horse. She further clarified that the owner of the Horse had been Mr. Eggert Bock, who had passed away in February 2013.
- 4.2 The PR did not deny the presence of Nandrolone in the Horse's urine, but claimed that Estranediol was a metabolite of Nandrolone. Together with her explanations, the PR also submitted some product information regarding an anabolic steroid called Anabolin Forte, on which the

substance nandrolone decanoate was listed as ingredient. The PR explained that the Horse had been treated on 23 January 2013 by Mr. Litz with a single injection of 1 ml Anabolin Forte upon specific advice of the treating veterinarian Dr. Meyer-Wilmes. Together with her explanations, the PR further submitted an expert report by Dr. Laurent Bigler, Director Mass Spectrometry Services at the University Zurich. Dr. Bigler confirmed in his report that it would be possible that a single injection of 1ml Anabolin Forte on 23 January 2013 had caused the positive findings of Nandrolone and Estranediol on 16 March 2013. Dr. Bigler further explained that at the time of sample collection, the exogenous compound (drug) had been washed out of the blood stream in the kidney, and that a formerly active compound was most likely not active anymore as soon as it had arrived in the bladder. Finally, Dr. Bigler confirmed that Estranediol was a metabolite of Nandrolone, and that based on the concentrations of Nandrolone and Estranediol found in the Horse's urine sample, the finding of Estranediol was almost certainly a result of the process of metabolizing the Nandrolone in the Horse's organism. In addition, the PR also submitted a number of extracts from scientific papers coming to the conclusion that Estranediol was a metabolite of Nandrolone. The PR further provided a list of feed, medication and care products used on the Horse. This list, however, did not include the product Anabolin Forte. The PR further submitted a list of competition results from herself and the Horse, as well as the show schedule for an event in Ebreichsdorf, Austria, which had taken place from 14 to 17 February 2013 and for which she had decided to withdraw. The competition results showed that the PR had competed with the Horse at the CSI2* in Ranshofen (AUT) on 4 April 2013.

- 4.3 Regarding Fault or Negligence, the PR submitted that she bore no Fault or Negligence for the presence of the Prohibited Substances in the Horse's system, as she had relied on the information of her specialized and experienced veterinarian, and as she had even tripled the recommended detection time of 8-10 days. That Mr. Litz had informed her regarding the medication recommended by Dr. Meyer-Wilmes after his phone conversation with the veterinarian, and that she had thereafter also called Dr. Meyer-Wilmes, who had confirmed the detection time as communicated to Mr. Litz. That further, if she or Mr. Litz had suspected that the veterinarian had suggested a treatment with a medication that was not approved for horses in Germany, and if she had known that a sound scientific basis had been established for its detection time, the Horse would not have been treated with Anabolin Forte. That she never had had the intention to risk the welfare of the Horse, and that the welfare of the Horse had never been in danger. That finally, even though Nandrolone was a Banned Substance under the FEI Prohibited Substances List, in some countries products containing Nandrolone existed that were approved for horses, i.e. in New Zealand, and that their use was legitimate for febrile infections and/or weakened horses.
- 4.4 Together with her explanations, the PR also submitted several witness statements including a statement by herself, as well as statements by her partner and owner of the stable where the Horse was stabled, Mr.

Ralf Litz; by her lawyer Dr. Jürgen Weyers; by her groom Ms. Tanja Willhardt and by her former veterinarian Dr. Marco Müller-Dörr.

- 4.5 In his statement Mr. Litz explained that he was the partner of the PR, that he owned and ran the facilities where the horses of the PR, including the Horse, were stabled, that he was breeding and dealing with horses, and that he also competed. He further stated that as the Horse had suffered from a febrile infection, he had called Dr. Meyer-Wilmes, the Horse's veterinarian. That Dr. Meyer-Wilmes had been chosen on recommendation of the Horse's owner, and that he had checked his references and experience prior to accepting him. That Dr. Meyer-Wilmes had recommended using the second syringe of two syringes which he had left about two weeks earlier for another horse, and that he had explained that the content of the syringe would improve the Horse's appetite. That further, questioned about the detection time of the medication, Dr. Meyer-Wilmes had guaranteed that the dosage of 1ml contained in the syringe would not lead to any positive test anymore after about 8-10 days. That after the positive findings had been notified to the PR, Dr. Meyer-Wilmes had been asked about the source for the indicated detection time, and that he had first stated that he had relied on a scientific book, whereas later on he stated having relied on oral advice by a professor from the University Vet Clinic of Hannover. Lastly, Mr. Litz explained that on 15 May 2013, he had also visited Dr. Meyer-Wilmes, who had then refused to sign a written statement as previously promised, confirming his recommendation to use the product Anabolin Forte on the Horse, and his indication of a detection time of about 8-10 days. That he believed that Dr. Meyer-Wilmes had changed his mind with regards to the statement, as apparently he was afraid that it could be used against him by German authorities, since the recommended medication had not been approved for horses in Germany.
- 4.6 In his statement, Dr. Weyers explained that he had been Mr. Litz's lawyer for five years and that he knew the PR since 2008. He further confirmed having participated in a conference call during which Dr. Meyer-Wilmes had agreed to provide a statement to the FEI Tribunal, confirming his recommendation to use the product Anabolin Forte and its detection time.
- 4.7 In her statement, Ms. Willhardt provided various details as to how the PR took care of her twelve competition horses, and further explained that whenever medication was left at the Horse's stable by a veterinarian, the PR had been always inquired whether the product could test positive and for how long it tested positive.
- 4.8 In his statement, Dr. Müller-Dörr confirmed that whenever he had treated one of the PR's horses, she had always inquired regarding the detection time of the product used.

5. The additional proceedings regarding the member of the Support Personnel

- 5.1 Following Mr. Litz's statement of 21 May 2013, by means of Notification Letter of 6 June 2013, the FEI charged Mr. Litz as member of the Support Personnel, under Article 2.2 of the EADCMRs, for an alleged anti-doping rule violation. The FEI argued that if it satisfied its burden of proving that Mr. Litz violated the EAD Rules, the FEI requested the Tribunal to impose a period of ineligibility on Mr. Litz in accordance with Article 10.2 of the EAD Rules, but that Mr. Litz, as member of Support Personnel, had the opportunity to establish any basis for eliminating or reducing the Sanction in accordance with Article 10.4 of the EAD Rules. That further, the Tribunal in deciding an appropriate sanctions, had to consider that a Banned Substance had been detected in the Horse's Sample, and that Mr. Litz had confirmed in his statement (i) that he had been actively involved in selecting Dr. Meyer-Wilmes as the PR's veterinarian, (ii) that he had administered, 1ml of Anabolin Forte to the Horse on 23 January 2013, and (iii) that he had completely relied on the advice of Dr. Meyer-Wilmes. The Notification Letter also included notice that Mr. Litz was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. Further Mr. Litz was informed that he was entitled to submit written explanations, and that he had the right to attend the Final Hearing, which had been scheduled for 11 June 2013.
- 5.2 Upon request by Mr. Litz, a Preliminary Hearing took place on 7 June 2013. During the Preliminary Hearing, Mr. Litz confirmed his written statement of 21 May 2013, i.e. that on advice of Dr. Meyer-Wilmes, he had administered 1ml of Anabolin Forte, containing nandrolone decanoate, to the Horse on 23 January 2013, and that this had lead to the positive test result. That however, Estranediol was a metabolite of Nandrolone, and that therefore, only one Banned Substance had been found in the Horse's Sample. Mr. Litz disputed that he had either chosen the Horse's veterinarian, and was neither the trainer of the Horse or the coach of the PR. That he had not competed on an international level since 2011, and was only competing at national level. He also clarified that he was solely the partner of the PR, and the owner of the stable where the Horse is stabled, but that he was not assisting the PR in participating or preparing for equine sports competition. That therefore, he did not qualify as "Support Personnel" under the EAD Rules, as he was neither a "coach", "trainer", "athlete", "Horse owner", "team official" or "veterinarian" in the meaning of the definition of Support Personnel under the EAD Rules, as alleged by the FEI. That furthermore, as at present he was not registered with the FEI, he was not bound by the FEI's Rules or Regulations, in particular not by the EAD Rules or the GRs.
- 5.3 The FEI argued that by administering the product Anabolin Forte to the Horse, and by choosing the Horse's veterinarian, Mr. Litz had assisted the PR in "... participating in or preparing for equine sports Competition", as foreseen by the definition of Support Personnel. That further, even if he was not the owner of the Horse, he would still

qualify as member of the Support Personnel as he had confirmed that he "also compete(d)", and had therefore to be considered as an "athlete" in the meaning of the definition of Support Personnel. The FEI argued that the definition of "Support Personnel" had to be interpreted in a broad sense, including any person assisting the PR in any fashion. Alternatively the FEI relied on Article 161.2.6 of the GRs, arguing that under that rule, the Tribunal may impose Provisional Suspensions on anybody. Following the Preliminary Hearing, the Preliminary Panel decided to maintain the Provisional Suspension until the Hearing Panel could review the question as to whether or not Mr. Litz qualified as a member of the Support Personnel.

6. The FEI's written submissions regarding the PR

6.1 Together with its explanations, the FEI provided an expert statement by Dr. Stuart Paine, BSc (Hons), PhD, MRSC, CCHEM, CSci, ACS. Dr. Paine accepted that from a scientific perspective the intravenous administration of 1ml Anabolin Forte presented a plausible explanation of the source of the Banned Substances. Dr. Paine also agreed with Dr. Bigler that Estranediol was a metabolite of Nandrolone, but emphasised that two chemical species, both prohibited under the FEI Equine Prohibited List, had been detected in the Horse's urine sample. Dr. Paine further stated that the 2013 USEF Guidelines for Drugs and Medications foresaw a detection time of 35 days for Nandrolone, and that insofar as Nandrolone had been banned outright in Europe, no Anabolin Forte should have been given in the first place. Lastly, Dr. Paine explained that anabolic steroids were used for medical purposes in horses, especially in the US and Australia, and clarified that a series of medications existed to treat a horse's condition, other than steroids but equally effective, and which did not endanger the level of playing field.

6.2 In essence the FEI submitted:

- a) That the PR had not disputed that the two Banned Substances Nandrolone and Estranediol were present in the sample collected from the Horse at the Event, and that it had therefore discharged its burden of establishing that the PR had violated Article 2.1 of the EAD Rules.
- b) That it accepted - as affirmed by Dr. Paine - that the PR had proven by a balance of probability, as required under Article 3.1 of the EAD Rules, that the Nandrolone and Estranediol found in the Horse's sample had been caused by the intravenous administration of 1ml of the product Anabolin Forte, 52 days prior to the sampling.
- c) That a period of Ineligibility of two years had to be imposed in accordance with Article 10.2 of the EAD Rules, unless the conditions for eliminating, reducing or increasing that period, as set out in Articles 10.4 and 10.5 of the EAD Rules, were met.

- d) That no elimination or reduction under Article 10.4 of the EAD Rules was applicable, as the PR did not establish that she bore No (No Significant) Fault or Negligence for the rule violation. The FEI argued in this context that the PR, provided she had applied utmost caution, could have reasonably known, or at least suspected, that the Horse's system contained Prohibited Substances. That if the PR had become acquainted with the Equine Prohibited List and the actual treatment of the Horse – as it had been her responsibility – she would have been aware that each ml of the Anabolin Forte solution contained 50mg of nandrolone decanoate, as the leaflet of the product mentioned two names as main ingredient, "Nandrolone decanoate" and "19-nortestosterone-17-decanoate", and as "Nandrolone" and "Nortestosterone" could have been easily found on the FEI Prohibited Substances List.
- e) The FEI further argued that the PR had also been at fault when relying on the advice of one sole veterinarian with regards to a product that was clearly banned by the prevailing doping rules. That further the treatment administered was not licensed in Germany, and that Dr. Meyer-Wilmes, who had allegedly suggested the treatment, apparently did not have any scientific basis regarding the detection time. That nevertheless, it had been the PR's duty to select a trustworthy and experienced veterinarian, and to make sure that the veterinarian acts in accordance with the applicable rules. That finally, competitors were responsible for how their staff cared for the horses and for the medical treatments administered to them, and that therefore the PR was responsible for the actions taken by Dr. Meyer-Wilmes and Mr. Litz.
- f) That lastly, the allegedly wrongly indicated detection time was irrelevant, since the mere detection of Nandrolone (and its metabolite Estranediol) constituted a breach of the rules, and that therefore the Anabolin Forte should not have been administered in the first place. With regards to the treatment recommended by Dr. Meyer-Wilmes and the detection time indicated by him, the FEI pointed out that only indirect sources of evidence (i.e. the statement of Dr. Weyers and Mr. Litz) had been provided, and that even if the allegations were confirmed by Dr. Meyer-Wilmes, for reasons above, no elimination or reduction of the otherwise applicable sanction was possible.
- g) That it did not contest that Estranediol was a metabolite of Nandrolone, but that however, two separate Prohibited Substances had been detected in the Horse's sample. That this had nonetheless not to be considered as multiple substances under Article 10.6.6 of the EAD Rules. That however, aggravating circumstances under Article 10.5 of the EAD Rules had to be considered, as the product Anabolin Forte was not licensed in the country of administration.
- h) Finally, and as the PR had competed with the Horse at the CSI2* in Ranshofen (AUT) on 4 April 2013, the PR's individual results obtained with the Horse at the Event in Ranshofen had to be also

disqualified in accordance with Article 10.7 of the EAD Rules, with all resulting consequences.

7. Further submissions during the Final Hearing

- 7.1 The Final Hearing took place on 11 June 2013. During the Final Hearing, both Parties referred to their written submissions. Both Parties accepted that the PR had established how the Banned Substances had entered the Horse's system, and that the injection of 1ml of the product Anabolin Forte had caused the positive findings. It was therefore agreed to limit the Final Hearing to the question of whether any conditions for eliminating, reducing or increasing the period of Ineligibility of two years existed. In addition, the Parties agreed to consider the case of Mr. Litz throughout the Final Hearing separately.
- 7.2 During the Final Hearing, the PR clarified that she lived at the stables, and that her groom took care of her horses, and Mr. Litz took care of the stables. She further confirmed that she had been aware of the FEI Prohibited Substances List and the difference between Banned Substances and Controlled Medication Substances, and that she also knew that Banned Substances should never be used on a horse, but that she had never heard about anabolic steroids prior to the positive findings. She further explained that around mid 2012, the owners of her horses had hired Dr. Meyer-Wilmes as veterinarian, as they wanted a different opinion and probably also for financial reasons. That Mr. Litz had solely checked Dr. Meyer-Wilmes references and background. That the veterinarian, her groom and Mr. Litz were the only persons she had authorised to administer injections, and that she had also administered injections where necessary. That Mr. Litz had further been generally authorised to take care of her horses, especially when she was absent. With regard to the injection of Anabolin Forte, the PR argued that she had only learned about it once she had come back to the stables from her parents' house, on either the same day or the day after the injection. That however, once Mr. Litz had told her about the injection, she had immediately called Dr. Meyer-Wilmes to investigate regarding the detection time of Anabolin Forte. That Dr. Meyer-Wilmes had not informed her that the syringe contained a Banned Substance, and that therefore she was now seeking legal action against him. Lastly, and upon question by the FEI, the PR explained that she had thought that a Medication Log book was only required for a member of the team, and not for each of her horses. That she had nonetheless taken notes of medications given to her horses, which she was able to provide. She further clarified that the list of feed, medication and care products used on the Horse previously submitted by her did not include Anabolin Forte, as it only concerned the time period after the Horse had been in the clinic in 2012.
- 7.3 The PR, relying on several previous FEI Tribunal Decisions and especially reviewing and comparing with the cases 2009/18 WHISPER 156, Final Tribunal Decision, dated 2 September 2009 and 2008/11 CARLOS BOY, Final Tribunal Decision dated 15 July 2008, argued that many mitigating

factors had to be considered, in particular (i) that she had accepted her mistake immediately, had provided full explanations how the Banned Substance entered the Horse's system and had further fully cooperated with the FEI; (ii) that as the owner had chosen and paid the veterinarian and based on his credentials, she had had no reasons to object to Dr. Meyer-Wilmes; (iii) that the Horse had been treated for a legitimate reason, and that the single injection of 1 ml had not had the potential to significantly enhance the performance, if even at all, and that further the Horse's welfare had never been at risk; (iv) that moreover, she had never had an intention to enhance the performance of the Horse, and that indeed no performance had been enhanced; (v) that she had been competing on an international level for 15 years and that she had never had any issues before; (vi) that the fact that she could have known about the possibility of a positive finding should not affect her case adversely, as for that reason she had expressly asked her veterinarian, and that in most or even all cases with Prohibited Substances, a PR could avoid the positive finding, if the person had thoroughly researched for information.

- 7.4 That further, the fact that the product Anabolin Forte was not licensed in the country of administration, was not a factor for aggravating circumstances, as per definition a Banned Substance was never approved, and if it was approved for animals or commonly used for treatment of horses, the Substance was re-classified in the FEI Equine Prohibited List. That Nandrolone was approved for Horses in New Zealand, and for cats and dogs in several European countries, including the Netherlands, UK and Ireland.
- 7.5 That therefore, and in view of the mitigating factors, the sanction had not to exceed 3-4 months of period of Ineligibility, a fine of maximum CHF 1,500 and a contribution to the legal costs of the FEI of not more than CHF 1,000.
- 7.6 That finally the period between sampling and imposing a Provisional Suspension on her (16 March 2013 to 17 April 2013) had to be accredited against the period of Ineligibility, as it had not been her fault that one month elapsed until she had been notified. And that for the same reason and as fairness was required, Article 10.7 of the EAD Rules was not applicable and her results from the CSI Ranshofen, which had taken place from 4 April – 7 April 2013, 19 days after the Sampling, were not to be disqualified.
- 7.7 During the Final Hearing, the witnesses, Mr. Litz, Ms. Willhardt, Ms. Karin Stroman, the PR's mother, Mr. Michael Hechtner, trainer of the PR, and Dr. Müller-Dörr were heard.
- 7.8 Mr. Litz explained that he did not own all the horses stabled in his stables, and that therefore several veterinarians had been taking care of the horses in his stable. That in addition, a house-veterinarian was in charge of smaller treatments, or in case horses gave birth. He further clarified that he did not have any contract with Dr. Meyer-Wilmes, but that one of the owners of horses ridden by the PR had asked him to contact Dr. Meyer-Wilmes, in order to engage him as future

veterinarian. That in case his friends would not have confirmed that they had been satisfied with Dr. Meyer-Wilmes' services, he would not have accepted him as veterinarian. Mr. Litz further stated that he had been in touch with Dr. Meyer-Wilmes several times on the days prior to the injection of the Anabolin Forte, and that only after the Horse's fever had been lowered down, Dr. Meyer-Wilmes had suggested injecting to the Horse the syringe which he had left with Mr. Litz - unmarked and without package or leaflet - for an old stallion a couple of weeks earlier. That he had personally locked the syringe in a refrigerator, and had also locked the door of the room in which the refrigerator was kept. That Dr. Meyer-Wilmes had been travelling abroad at that time and had therefore instructed him what to do. That further, he had asked Dr. Meyer-Wilmes about the content of the syringe, but that Dr. Meyer-Wilmes had only explained to him that the medication was good for the Horse, and that the Horse would test positive for 8-10 days. That lastly, he had always informed the PR regarding medications given to her horses, and that the PR had always double-checked with the veterinarian herself, and that there had been cases where the PR had decided to not compete with a horse, she had not been certain about the substances administered or the detection times.

7.9 Ms. Wilhardt confirmed her written statement and further explained that she had not been aware of the FEI Prohibited Substances List and that she had always inquired regarding Prohibited Substances with the veterinarian. She further explained that she generally knew how to administer injections, but that she had never injected anything to any horse of the PR, nor had she been present when Mr. Litz injected the Anabolin Forte to the Horse.

7.10 Dr. Müller-Dörr explained that as he had been treating the horses of the PR for five to six years, he was aware of the horses' health problems. That he had always checked the horses before he had treated them, and that he would never instruct anyone, except his assistant, to administer injections to any horses. That the Horse had started to have some health problems mid 2012, and that it had been agreed with the PR that the Horse did not compete for some time. That however, as the owner had decided to nevertheless take the Horse to competition, he had also chosen a different veterinarian. Dr. Müller-Dörr further confirmed that as veterinarian, he was aware of the product Anabolin Forte, but that he had never prescribed the product. Further, as he did not work with anabolic steroids, he did not know the detection time of Anabolin Forte, but imagined it to be long, and that it could be different for different horses.

7.11 The FEI argued that the requirements of a No Fault or Negligence finding were not fulfilled in the case at hand as this concept was limited to contamination or similar constellations, but was not applicable in the case at hand, where the PR had relied on a veterinarian. That further the PR had been negligent per se as she had no knowledge of anabolic steroids, and had only inquired regarding the detection time, but had neither done any research, nor had she been concerned regarding the Prohibited Substances in the Horse's system. In addition, that the PR

had not been present at the time of the treatment, and that she had authorised someone without veterinary training to treat the Horse with an unmarked syringe. That moreover it had been negligent by the PR to authorise treatment with a syringe which had been left in the stables for a different horse, and furthermore that the substance administered had neither been licensed nor permitted for treatment in Germany, the country of administration. That in addition, a completely different sanctioning system had been in place for the cases referred to by the PR, and that therefore only the general analysis of the case, and not the sanctioning system could be considered for the case at hand. That finally it had been the PR's responsibility to possess a FEI Medication Log book as required under both the VRs and the EAD Rules. Lastly, the FEI acknowledged that the PR had admitted the Anti-Doping Rule Violation quite quickly, which could be considered as mitigating factor.

8. Submissions in the case of Mr. Litz

- 8.1 During the Final Hearing, Ms. Willhardt, Ms. Stroman and Mr. Hechtner all confirmed that Mr. Litz was not the trainer of the PR. Mr. Hechtner further explained that if he and the PR attended a competition together, he would act as the PR's trainer, and that for the rest of the time, as far as he was aware, Mr. Hieb was the trainer of the PR.
- 8.2 Mr. Litz confirmed that he held a national licence and that he competed at small national shows, but insisted having retired from FEI competitions. He further stated that he had not attended the Event at which the Horse had tested positive, but that he had been to parts of a previous FEI event in Leipzig, as an accompanying person, with the purpose of meeting various business partners. That in the past two years, the PR and himself had almost never gone to the same competitions, as the PR had competed at international and national competitions, and that he himself only took part in regional competitions, with the younger horses of the stable. Mr. Litz further clarified that at the stables, the work was clearly divided between the PR and himself, and that he was more the farmer looking after young horses and its riders, and that the PR only replaced him in his job when he was absent. When questioned about the presentation of his business on his own website, he confirmed that according to the website, he was responsible for Team Management, Formation, Management and Elite Sport, and that the PR's tasks were Riding and Administration. That however the information on his website was not up to date, and that at the time it had been created, in 2005 or 2006, he had still been riding on an international level, and the PR had been his employee. That however, despite the mention of "Team Management" on the website, a team had never existed.
- 8.3 Mr. Litz further explained that he had grown up with horses, and that even though he had no formal veterinary training, he had been taught by veterinarians how to administer injections, and that finally he had to know how to complete first aid measures for cases when no veterinarian was present or in reach.

- 8.4 Mr. Litz argued that the FEI had no jurisdiction over him as he had not been registered with the FEI since 2011. Further that even if he would be found bound by the rules, he could not be considered as member of the Support Personnel, as firstly he was not an Athlete as per EAD Rules definition, as he did not take part in FEI events. That secondly, it was not possible to consider him as "team staff" under the Support Personnel definition as he only took care of a horse in an emergency situation, which was not sufficient to qualify him as a member of the team staff. And that thirdly, he could not be considered as paramedical personnel, as this was a person with some kind of medical education, and that the pure administration of a substance to a horse would not be sufficient. That finally, he did not assist the PR in "participating in or preparing for equine sports Competition" and that therefore, the FEI Rules were not applicable to him. That consequently, no Provisional Suspension should have been imposed on him.
- 8.5 The FEI argued that Mr. Litz had to be considered as member of the Support Personnel under the FEI Rules, as he continued competing in an FEI sport, even if only at a national level, and that therefore he had to be considered as an "athlete" in general, even if he would not fulfil the conditions of an "Athlete" as per definition of the EADCMRs. That furthermore, according to Article 7.5 of the EAD Rules, the FEI had jurisdiction to complete its Results Management process, if a member of the Support Personnel retired while a Results Management was underway, or even prior to the beginning of a Results Management process. That alternatively, he had to be considered as a member of the team staff, as his website clearly identified him as such, and as he had acted accordingly. That it followed from his actions that he had the authority to inject horses of the PR. The FEI further highlighted that he had injected the Horse with an unmarked syringe, over which he also had had authority, demonstrated by the fact that he had previously locked it away in the refrigerator, which itself was placed in a room locked by him. That it was also Mr. Litz who had had the authority to decide whether or not to take Dr. Meyer-Wilmes on board. In addition the FEI argued that the EAD Rules in their Preamble – similar to the concept of the Athlete's Entourage under the WADA Rules – included as member of the Support Personnel everyone around the athlete and the horse. That also the intention of the Rules addressing Support Personnel was precisely as to address cases as the one at hand, enabling the FEI to sanction someone other than the athlete for his or her wrongful conduct. That alternatively, Mr. Litz also qualified as "paramedical personnel" who assisted the PR "... in any fashion .. participating in or preparing for equine Competition", as he was involved in the care of the Horse. That therefore, Mr. Litz qualified as "athlete", "team staff" and "paramedical personnel" under the definition of the Support Personnel of the EADCMRs. With regards to the question of Fault or Negligence for the rule violation the FEI argued that the administration of an unmarked syringe, originally dedicated for another horse, was per se negligent. That finally, the FEI however acknowledged that Mr. Litz had admitted the Anti-Doping Rule Violation quite quickly which could be considered as mitigating factor.

9. Post-Hearing submissions

- 9.1 Following the Final Hearing, and upon request of the FEI Tribunal, the PR submitted a Medication Logbook, which contained a list of medication administered to the Horse between 15 March 2011 and 23 January 2013, including the Anabolin Forte injection of 23 January 2013. In response, the FEI argued that as the PR had described a process where she was "writing down" all medications administered to the Horse, it would have expected to receive some handwritten notes, and given that the entries in the Medication Logbook provided by the PR were typed, it was not clear whether the document submitted had been created for the express purpose of the request for a Medication Logbook arising from the Final Hearing, or whether it was a contemporaneous representation of medication administered. The PR responded that she had stored important information regarding her twelve competition horses, i.e. exercise plans, medication administered etc. electronically, and that in order to have a better overview she had kept only one Medication Logbook for all those twelve horses. That further, as the FEI had not contested her explanation regarding the source of the positive finding, she had not considered it necessary to submit the Medication Logbook earlier.

10. Jurisdiction

- 10.1 As regards the PR, the Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and EAD Rules. The Tribunal however decides that it does not have jurisdiction over Mr. Litz, as will be detailed below.

11. The Person Responsible

- 11.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she was the rider of the Horse at the Event.

12. The Support Personnel

- 12.1 The institution of the Support Personnel is defined in Appendix 1 of the EADCMRs as

"Any coach, trainer, athlete, Horse owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports."

It is disputed whether Mr. Litz qualifies as Support Personnel under the EADCMRs.

13. The Decision

- 13.1 The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Nandrolone and Estranediol 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. Nandrolone and Estranediol, provided they are detected in a horse's sample, are classified as Banned Substances under the FEI Equine Prohibited Substances List.
- 13.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Articles 2.1 and 3.1 of the EAD Rules. This is undisputed between the Parties.
- 13.3 In cases brought under Article 2.1 of the EADCMRs, the so-called strict liability principle, as described in Article 2.1.1 of the EAD Rules, applies. This means that once a positive finding of a Prohibited Substance has been established, an EAD Rule violation has been established by the FEI and the PR has the burden of proving that she bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the EAD Rules. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the EAD Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a "pre-requisite" to the application of Article 10.4 of the EAD Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".
- 13.4 The Tribunal takes note of the explanations by the PR on how the Nandrolone and Estranediol had entered the Horse's system, namely by injection of 1 ml of Anabolin Forte, containing 50mg of nandrolone decanoate, on 23 January 2013 by Mr. Litz. Further that Mr. Litz had confirmed such injection. The Tribunal takes further note that the expert of the PR, Dr. Bigler, and of the FEI, Dr. Paine, confirmed that it was plausible that a single injection of 1 ml Anabolin Forte on 23 January 2013 lead to a positive finding on 16 March 2013. Further that the two experts agreed that the positive finding for Estranediol resulted from the process of metabolizing the Nandrolone in the Horse's system. The Tribunal therefore finds that the PR has established by "a balance of probability", as required under Article 3.1 of the ECM Rules, that the injection of Anabolin Forte has caused the positive test result. The Tribunal is therefore satisfied that the PR has established how the Prohibited Substances had entered the Horse's system.
- 13.5 The Tribunal therefore needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. To start with, the Tribunal takes note of the PR's explanations that she bore No Fault or Negligence as she had relied on the information of her

specialized and experienced veterinarian, that she had even tripled the detection time recommended by the veterinarian. It further noted that the PR would never have treated the Horse with Anabolin Forte, if she or Mr. Litz had suspected that the veterinarian suggested a treatment with a medication that was not approved for horses in Germany.

13.6 However, whereas the Tribunal acknowledges that the PR admitted the mistake immediately, waived her right to the B-Sample analysis and cooperated throughout the proceedings, the Tribunal finds at the same time that the PR was highly negligent for several reasons. To start with, in accordance with Article 2.1.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body. In the case at hand, the PR, despite having competed internationally for 15 years, had not made herself familiar with the EADCMRs in detail, as would have been required from an athlete competing at her level. In this respect, the Tribunal acknowledges that the PR knew that Banned Substances should never be given to the Horse, but finds that the PR acted extremely negligently as she had never previously heard of anabolic steroids.

13.7 The Tribunal also holds that the PR is responsible for the actions taken by individuals to whom she had given authorisation to take care of or treat the Horse, such as the Horse's veterinarian or Mr. Litz. The Tribunal holds that by relying on a veterinarian alone, a PR does not fulfil the expected duty of care. The Tribunal therefore holds that the PR could, and should, have done much more than simply inquiring regarding the detection time of the product injected into the Horse. Firstly, she should have requested the name of the product and the substances contained in the product. Following some basic research she would then have known that Anabolin Forte contained nandrolone decanoate. The Tribunal is of the opinion that based on the product name alone, the PR could have known or at least suspected that the product contained anabolic steroids, that anabolic steroids are Banned Substances, and that Banned Substances should never to be administered to a horse.

13.8 The Tribunal further finds that the PR had been additionally negligent by not being present, and only authorising someone without veterinary training, to treat the Horse with an unmarked syringe, which had initially been left at the stables for a different horse. Lastly, the Tribunal determines that the PR had been negligent by not possessing a FEI Medication Logbook for each of her competition horses as required under the VRs and EAD Rules. In this respect the Tribunal does not consider "the notes" submitted by the PR after the Hearing as fully convincing, as the PR did not establish to the Tribunal's satisfaction that these notes concerning the medication administered to the Horse were taken throughout the alleged time period, as the typed form of notes submitted appears to have been created for the purpose of the case at hand only. Even if the Tribunal accepted these notes as presenting an FEI Medication Logbook, the PR was nonetheless highly negligent for reasons as previously outlined above.

- 13.9 Further, the Tribunal also takes note of the PR's explanations and urging that the Tribunal should consider that there were many mitigating factors in this case. The Tribunal acknowledges the PR's cooperation, but holds that it cannot consider this cooperation per se as a mitigating circumstance, because providing full explanations concerning the source of the Prohibited Substances is a pre-requisite to the application of Article 10.4 of the EAD Rules, and can therefore not additionally be considered as a mitigating factor. The Tribunal further holds that a treatment with Banned Substances does not qualify as a legitimate treatment, as Banned Substances should never be used on horses, according to FEI rules. The Tribunal lastly finds that it is of little relevance in this context whether the welfare of the Horse had been at risk, whether or not the PR had intended to enhance the Horse's performance, or whether or not such performance enhancement took place. The Tribunal reaches this conclusion because it was the PR's duty to avoid the presence of any Prohibited Substances, in particular Banned Substances, in the Horse's body. Specifically, for a violation of Article 2.1 of the EAD Rules, no performance enhancement was required to establish a violation, as the mere presence of Banned Substances constitutes an Anti-Doping Rule violation. The Tribunal therefore finds that these arguments put forward by the PR cannot be considered as mitigating circumstances. The Tribunal further finds that in order to reduce or eliminate a period of Ineligibility according to Article 10.4 of the EAD Rules, exceptional circumstances are required. The Tribunal however finds that no such exceptional circumstances are present in the case at hand, and that therefore there is no basis to reduce or eliminate the period of Ineligibility under Article 10.4 of the EAD Rules.
- 13.10 In conclusion, the Tribunal finds that the PR has not succeeded in establishing that she bears No (Significant) Fault or Negligence for the rule violation.
- 13.11 Accordingly, there is no basis for the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the EAD Rules.
- 13.12 In addition, the Tribunal finds that even though two Banned Substances have been detected in the Horse's sample, as the FEI had accepted that Estranediol was a metabolite of Nandrolone, there is no finding of multiple substances and therefore there are no aggravating circumstances under Articles 10.6.6 and 10.5 of the EAD Rules.
- 13.13 In the case of Mr. Litz, and considering the explanations of the Parties, the Tribunal determines that it does not have jurisdiction over Mr. Litz. The Tribunal comes to this conclusion as it considers that the FEI has not established to the Tribunal's satisfaction that Mr. Litz had been bound by FEI Rules, in particular the EADCMRs, at the time of the alleged violation of the EAD Rules. The Tribunal finds that in order for it to have jurisdiction over a person, and to be able to impose a sanction against that person, that person has to be bound by FEI Rules, i.e. through membership, license or accreditation. In line with a previous

decision of the Court of Arbitration for Sport (CAS) (CAS 2011/A/2675, *Overvliet v IWF*, award dated 25 May 2012), the Tribunal is of the opinion that any person who participates in an event is deemed to have agreed to be bound by the Regulations of that event under the jurisdiction of the governing body of that event, i.e. here the FEI, and that therefore, no actual signature is required to be bound. The Tribunal understands that Mr. Litz had not been registered with the FEI in 2013, and had therefore not been registered with the FEI at the time of the alleged violation of the EAD Rules. Registration with the FEI would have meant that he would have been granted a license, authorising him to participate or be involved in FEI activities, and by which license he would have been bound by the EADCMRs. The Tribunal further finds that Mr. Litz had neither "participated" in the Event, as he had neither been accredited for the Event, nor had he been present at the Event. In this respect, the Tribunal takes note that Mr. Litz had been accredited as an "accompanying person" for a previous FEI Event in 2013. The Tribunal however finds that the presence at an earlier event is not sufficient to consider him to be bound by the FEI Rules at the Event where the rule violation took place. The Tribunal therefore finds that Mr. Litz was not bound by the FEI Rules, as he was neither registered with the FEI, nor had he participated in the Event. Finally, even though the Tribunal is generally of the opinion that everyone who injects a Banned Substance to a horse has to be held liable for his actions, it nonetheless finds that in order for it to have jurisdiction over this person, the person has to be bound by the FEI Rules.

14. Disqualification

- 14.1 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 of the Person Responsible's individual results obtained in the Event, with any and all Horses with which the PR competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1 of the EAD Rules. Lastly, the Tribunal is also disqualifying any results obtained from the date the positive sample was collected through the commencement of the Provisional Suspension, in accordance with Article 10.7 of the EAD Rules.

15. Sanctions

- 15.1 Under the current EAD Rules, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year period of Ineligibility, for first time offenders. The Tribunal finds that based on the Case File, the PR is a first offender in the meaning of the EAD Rules, since she has not violated the EAD Rules previously. Further as there are no reasons for reducing the period of Ineligibility, the Tribunal is imposing a period of Ineligibility of two years on the PR.

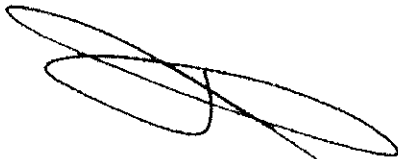
- 15.2 The Tribunal takes note of the PR's argument that there had been delays, not attributable to the PR, with regard to the initial Notification of the positive findings, and as regards the imposition of a Provisional Suspension, and that therefore, the period of Ineligibility had to commence as early as the date of sample collection, as foreseen under Article 10.8.1 of the EAD Rules. The Tribunal does not agree with the alleged delays, as the period of time between receipt, by the FEI, of the laboratory report on 10 April 2013, and the notification and imposition of a Provisional Suspension on 17 April 2013, was within a very reasonable time. The Tribunal is of the opinion that the PR has not been prejudiced by the fact that it took one week for the FEI to gather all the necessary information in this case, thereby making sure that the notification was handled with respect for the PR's rights. The Tribunal therefore finds that the notification and the imposition of a Provisional Suspension were prompt according to Article 7.1.3 of the EAD Rules. Nonetheless, the Tribunal finds that as the PR had promptly admitted the EAD Rule violation after having been confronted with it, the period of Ineligibility shall commence on the date of Sample collection, in accordance with Article 10.8.2 of the EAD Rules.
- 15.3 Given the Tribunal's finding that it does not have jurisdiction in the case of Mr. Litz, the Tribunal is not imposing any sanctions on the latter, and the Provisional Suspension imposed on him shall be lifted immediately and without further notice from the date of the notification of the present decision.
- 15.4 The 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 Sample collection, i.e. 16 March 2013. Therefore, the PR shall be ineligible **through 15 March 2015**.
 - 2) The PR is fined **CHF three-thousand (CHF 3,000)**.
 - 3) The PR shall contribute **CHF two-thousand (CHF 2,000)** towards the legal costs of the judicial procedure. The PR shall further bear the costs of the interpreter.
- 15.5 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.

- 15.6 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.
- 15.7 In accordance with Article 12 of the EAD Rules, the PR and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport 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: Mr. Litz; the owner of the Horse

FOR THE PANEL



THE CHAIRMAN, Mr. Pierre Ketterer