



## **DECISION of the FEI TRIBUNAL**

**dated 23 June 2016**

**Positive Controlled Medication Case No.:** 2014/CM09

**Horse:** VICTAR

**FEI Passport No:** 102XS57/OMA

**Person Responsible/NF/ID:** Said Al Balushi/OMA/10079195

**Event:** CEIYJ1\*80 – Muscat (OMA)/2014\_CI\_1785\_E\_YJ\_01\_01

**Date:** 29 November 2014

**Controlled Medication Substances:** Dexamethasone, Furosemide

### **I. COMPOSITION OF PANEL**

Mr. Laurent Niddam

### **II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Case File:** 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

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

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

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2014, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Said Al Balushi

**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* body during an Event without a valid *Veterinary Form*. *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**

The below presents a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. 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 Tribunal has fully 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 VICTAR (the "**Horse**") participated at the CEIYJ1\* 80 in Muscat, Oman, on 29 November 2014 (the "**Event**"), in the discipline of Endurance.

The Horse was ridden by Mr. Said Al Balushi, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").

- 1.2 The Horse was selected for sampling on 29 November 2014.
- 1.3 Analysis of blood sample no. 5527969 taken from the Horse at the Event was performed at the FEI approved laboratory, LGC Laboratory ("**LGC**") in the United Kingdom. The analysis of the blood sample revealed the presence of Dexamethasone and Furosemide.
- 1.4 The Prohibited Substances detected are Dexamethasone and Furosemide. Dexamethasone is a corticosteroid with anti-inflammatory effect. Furosemide is a diuretic used for the treatment of epistaxis, hypertension and oedema. Both substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request has been made to administer Dexamethasone and Furosemide to the Horse, and no Veterinary Form has been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Dexamethasone and Furosemide in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

## **2. The Proceedings**

- 2.1 The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the potential consequences, were officially notified to the PR and the owner of the Horse, through the Oman National Federation ("**OMA-NF**"), by the FEI Legal Department on 26 January 2015.
- 2.2 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 Tribunal.

## **3. The B-Sample Analysis**

- 3.1 Together with the Notification Letter of 26 January 2015, the PR and the owner of the Horse were also informed that they were 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 Neither the PR nor the owner of the Horse did request for the B-Sample to be analysed, and thus accepted the results of the A-Sample analysis.

#### **4. Proceedings**

- 4.1 On 30 March 2015, the OMA-NF confirmed that the PR and the owner of the Horse have received the Notification Letter, and that they have acknowledged receipt thereof.

#### **5. Provisional Suspension**

- 5.1 On 5 November 2015, the FEI requested the lifting of the Provisional Suspension. The FEI explained that so far, despite various reminders, the PR has not provided any explanations for the positive finding, and that the FEI did not receive any answer anymore to communications related to the case. That the PR had however requested for a hearing to take place. That given these circumstances, and further given that the ECM Rules foresaw an average period of Ineligibility of six (6) months in similar cases, the FEI requested the lifting of the Provisional Suspension, pending the issuance of the Final Tribunal Decision. The FEI further highlighted that the FEI request had by no means to be understood as a final statement by the FEI regarding the sanctions to be imposed on the rider in the Final Tribunal Decision; rather, that the request was being made with an abundance of caution, in order to avoid that the Provisional Suspension was running longer than any final period of Ineligibility imposed at a later stage.
- 5.2 On 6 November 2015, the FEI Tribunal Chair – as no Hearing Panel had yet been appointed – decided to lift the Provisional Suspension of the PR with immediate effect, *i.e.*, as of 7 November 2015.

#### **6. Proceedings**

- 6.1 On 31 May 2016, the FEI provided its submission. To start with the FEI outlined, that the PR – despite several reminders during the year of 2015, with the last reminder on 27 April 2016 – has not provided the FEI with any explanations for the positive finding, and the FEI did not receive any answer to communications related to the case at hand.
- 6.2 Furthermore, the FEI submitted that:
- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal.
  - b) The elements of an Article 2.1 violation were straightforward. "*It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1*". Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample.
  - c) The results of the analysis of the A-Sample taken from the Horse at

the Event confirmed the presence of Dexamethasone and Furosemide, and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules.

- d) Further, that the PR did not challenge those findings in any way, since, other than the request from the PR, through the OMA-NF, to have a hearing, he never replied to any of the charges or communications related to the case at hand.
  - e) Accordingly, the FEI had discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.
  - f) In the case at hand, the PR has not provided any explanations for the positive finding. The PR has by ignoring several reminders and by not replying to any of the charges and communications neither established how the Prohibited Substances entered into the Horse's system, nor that he bore No (Significant) Fault or Negligence. The FEI submitted that a six (6) months period of Ineligibility according to Article 10.2 of the ECM Rules has therefore to be applied.
  - g) Furthermore, the FEI requested the Tribunal – pursuant to Article 9 of the ECM Rules - to disqualify the result of the Horse and the PR combination obtained in the Competition, and the consequent forfeiture of all medals, points, prize money, etc. won.
  - h) Finally, as fairness did not dictate that no fine be levied in the case at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter.
- 6.3 On 8 June 2016, - upon receipt of the Case File in the instant case - the Tribunal - through the OMA-NF - granted the PR a final deadline to provide his written explanations to the alleged rule violation. The Tribunal further requested the PR to confirm whether he maintained his hearing request; and that - in case of failure to confirm his hearing request within the deadline provided – the PR shall be deemed to have waived his right for a hearing.
- 6.4 The PR did not provide any explanations to the positive finding, or confirm that he maintained his request for a hearing to be held.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

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

Event.

## **9. The Decision**

- 9.1 As set forth in Article 2.1.2 of the ECM Rules, in cases where the PR waives analysis of the B-Sample and the B-Sample is not analysed, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample without a valid Veterinary Form. The Tribunal is satisfied that the laboratory report of the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of Dexamethasone and Furosemide in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. Dexamethasone and Furosemide are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 9.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 9.3 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 rule violation, to satisfy Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence", as set out in Article 10.4.2 of the ECM Rules.
- 9.4 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 Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.
- 9.5 The Tribunal takes note that the PR did not provide any information on how the Dexamethasone and Furosemide entered the Horse's system, and therefore holds that the PR has not established how the Controlled Medication Substances entered the Horse's system. Accordingly, the Tribunal does not need to address the question of whether the PR has established that he bears no Fault or Negligence for the rule violation. Furthermore, given the lack of information provided by the PR, the Tribunal finds that the degree of Fault or Negligence of the PR for the rule violation is impossible to assess. The Tribunal therefore holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

## 10. Disqualification

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.

## 11. Sanctions

- 11.1 In accordance with Article 10.2 of the ECM Rules, the period of Ineligibility shall be commensurate with the seriousness of the offence taking into account the underlying objectives and rationale of the ECM Rules and the FEI Medication Code, as well as principles of fair play. Therefore the period of Ineligibility imposed on the PR shall be six (6) months. In this respect the Tribunal takes note that the PR has not at any stage engaged in the proceedings and has provided no explanation for what appears to be a clear rule violation. The Tribunal takes note that the PR has been provisionally suspended from 26 January 2015 until and including 6 November 2015, *i.e.*, over nine (9) months. The Tribunal takes further note that no violation of the Provisional Suspension has been brought forward by the FEI. The Tribunal therefore finds that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed.
- 11.2 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 **six (6) months** for the present rule violation. The period of Provisional Suspension, effective from 26 January 2015, the date of imposition of the Provisional Suspension, to 6 November 2015, the date of the lifting of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore no further period of Ineligibility shall be imposed on the PR.
  - 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
  - 3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of the judicial procedure.
- 11.3 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.
- 11.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within thirty (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**



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**One member panel, Mr. Laurent Niddam**