



## **DECISION of the FEI TRIBUNAL**

**dated 17 June 2015**

**Positive Controlled Medication Case No.:** 2014/CM02

**Horse:** HBOOB ALREEH

**FEI Passport No:** 102VY86

**Person Responsible/NF/ID:** Mohammed Abdulla T A Al Jumaily/QAT/10092306

**Event:** CEI2\* 120 – Doha, Mesaieed (QAT)/2014\_CI\_1097\_E\_S\_02\_01

**Date:** 22 February 2014

**Controlled Medication Substances:** Flunixin, Clenbuterol

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

Mr. Erik Elstad

### **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 7 November 2013 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 16 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. Mohammed Abdulla T A Al Jumaily

**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**

Below is a summary of the relevant facts and allegations 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 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 HBOOB ALREEH (the "Horse") participated at the CEI2\* 120 in Doha, Mesaieed, Qatar, on 22 February 2014 (the "Event"), in the discipline of

Endurance. The Horse was ridden by Mr. Mohammed Abdulla T A Al Jumaily, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").

- 1.2 The Horse was selected for sampling on 22 February 2014.
- 1.3 Analysis of urine and blood sample no. 5527759 taken from the Horse at the Event was performed at the FEI approved laboratory, the Laboratoire des Courses Hippiques ("LCH") in Verrières le Buisson, France by Maëlle Bouscarel, Senior Analyst, under the supervision of Dr. Yves Bonnaire, Director. The analysis of the urine sample revealed the presence of Flunixin and Clenbuterol.
- 1.4 The Prohibited Substances detected are Flunixin and Clenbuterol. Flunixin is a non-steroidal anti-inflammatory drug (NSAID) with anti-inflammatory and analgesic effect. Clenbuterol is a bronchodilator used for treatment of bronchitis and allergic airway disease. Flunixin and Clenbuterol are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Flunixin and Clenbuterol to the Horse, and no Veterinary Form had been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Flunixin and Clenbuterol 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 consequences implicated, were officially notified to the PR, through the Qatar Equestrian Federation ("QAT-NF"), and the owner of the Horse, by the FEI Legal Department on 7 April 2014.
- 2.2 In the Notification Letter the PR was also informed that due to the fact that he was under eighteen (18) years at the time when the entry was submitted, he had to inform the FEI of the representative nominated for him before the Event, in accordance with GRs Article 118.4.
- 2.3 By statement of 15 May 2014, Mr. Beshar Anas Al Morabet explained being the owner and trainer of the Horse, and that was also the person representative for the PR in accordance with the GRs.

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

- 3.1 Together with the Notification Letter of 7 April 2014, 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 The PR did not request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

#### **4. Written submissions by the PR**

- 4.1 On 6 May 2014, the PR explained that he had not trained the Horse for the Event, and had just been called to ride the Horse at the Event. That he had only seen the Horse on the day of the Event, and did not have any explanation regarding the training or treatment of the Horse before the Event. Finally, that he accepted being the PR in the case at hand, and that he was aware of the potential consequences of the positive findings.
- 4.2 On 12 May 2014, the PR further submitted a completed version of the FEI Questionnaire, signed by himself, the owner of the Horse and the Horse's veterinarian, Dr. Yusuf Abdulfatah Abu Samra. The individuals explained that the Horse would be treated for phlegm problems, depending on the environment where it stayed. That the Horse was stabled at the seaside, an area similar to a desert in which sandstorms occurred from time to time. That those sandstorms would cause breathing and lung problems to the horses, including the Horse. That therefore Dr. Samra had injected the Horse some Clenbuterol. That in light of the fact that according to the FEI List of Detection times, the detection time for Clenbuterol was seven days, the treatment had been made ten days prior to the Event. Moreover, that no veterinary treatment had been given to the Horse during one year prior to the Event, with the exception of "only normal vitamins and normal fluid". Finally, that they had no explanation for the positive finding of Flunixin, and that the Horse had never been administered this substance.

#### **5. FEI Response**

- 5.1 On 29 July 2014, the FEI provided its Response to the PR's submissions. In essence, the FEI argued that:
- a) as Controlled Medication Substances, for which no valid Veterinary Form had been submitted, had been present in the Horse's A-Sample taken at the Event, and since the PR had waived his right to the B-Sample analysis, a violation of Article 2.1 of the ECM Rules had been established.
  - b) as the PR had not provided any details regarding the dose of Clenbuterol allegedly administered by Dr. Samra, it was not possible to determine whether the PR's explanation would indeed account for the positive Clenbuterol finding. Further, that the PR had not provided any explanation for the positive Flunixin finding. The FEI therefore argued that the PR had not established how the Controlled Medication Substances had entered the Horse's system, and that therefore the first prerequisite for an elimination of reduction of the period of Ineligibility under Article 10.4 of the ECM Rules had not been fulfilled.

- c) however, even if the PR would have established how the Clenbuterol and Flunixin had entered into the Horse's system, the FEI was of the view that the PR was negligent in not getting at all involved in the Horse's preparation or status prior to the Event. That due to the fact that the PR had not provided a comprehensive explanation regarding the positive finding of the Prohibited Substances detected in the Horse's sample, it was difficult to assess the degree of Fault or Negligence of the PR for the rule violation.
- d) provided that the PR failed to establish the source of the Prohibited Substances, the Tribunal should impose a period of Ineligibility commensurate with the seriousness of the offence, taking into account the underlying objectives and rationale of the ECM Rules and FEI Medication Code, as well as principles of fair play. The FEI suggested that given the circumstances of the case at hand, a period of Ineligibility of at least six (6) months should be imposed on the PR.

## **6. Further Proceedings**

- 6.1 On 13 November 2014 and 22 February 2015, the PR submitted two further statements by Mr. Morabet. Mr. Morabet explained that he had requested Dr. Samra to administer Clenbuterol to the Horse since the Horse had been suffering from the weather condition that day, specifically as it had been very dusty in Qatar at that time. That Dr. Samra had injected a dose of 20 ml Clenbuterol to the Horse ten days prior to the Event. Further that Dr. Samra would usually administer Clenbuterol at that time of the year, and ten days prior to events. That he had no idea how the Flunixin had entered the Horse's system, and that he had never requested Dr. Samra to administer any Flunixin. Finally that he had been in the field of racing for eighteen years, and that during that period of time he had never been held responsible for any Anti-Doping Rule violation.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

- 8.1 Despite the fact that the PR was under eighteen (18) years when his entry was submitted he is the Person Responsible for the Horse, in accordance with Articles 118.3 and 118.4 of the GRs, as he had competed with the Horse at the Event.

## 9. The Decision

- 9.1 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 LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of Flunixin and Clenbuterol 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. Flunixin and Clenbuterol are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 9.2 The FEI has thus established an Adverse Analytical Finding for Flunixin and Clenbuterol, and has thereby 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 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.
- 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 Substances 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 of the PR's explanation that a dose of 20 ml of Clenbuterol had been injected to the Horse ten days prior to the Event. The Tribunal further takes note that the PR has not provided any explanations on how the Flunixin had entered the Horse's system. The Tribunal therefore finds that the PR has not established, by a balance of probability – as required under Article 3.1 of the ECM Rules - how the Flunixin had entered the Horse's system.
- 9.6 Accordingly, there is no basis for the Tribunal to determine the level of Fault or Negligence by the PR for the rule violation. Consequently there is also no basis for the Tribunal to determine whether any elimination or reduction of the otherwise applicable sanctions by virtue of Article 10.4.1 or Article 10.4.2 of the ECM Rules may be applied.
- 9.7 Once an ECM Rule violation has been established, fines and sanctions have to be applied in accordance with Article 169 of the GRs and Article 10 of the ECM Rules.

## **10. Disqualification**

- 10.1 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.

## **11. Sanctions**

- 11.1 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 **six (6) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR will be ineligible until (and including) **16 December 2015**.

2) The PR is fined **one thousand Swiss Francs (CHF 1000,-)**.

3) The PR shall contribute **five hundred Swiss Francs (CHF 500,-)** towards the legal costs of the judicial procedure.

- 11.2 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 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 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.

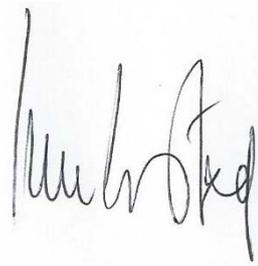
- 11.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

- 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 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 'Erik Elstad', is centered on the page. The signature is written in a cursive style with a large initial 'E'.

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**Mr. Erik Elstad, Chair of the FEI Tribunal**