



DECISION of the FEI TRIBUNAL

dated 8 February 2017

Positive Controlled Medication Case No.: 2016/CM01

Horse: RUBY PARK XTREEM

FEI Passport No: 102ST76/OMA

Person Responsible/NF/ID: Mohammed Sabilhassan Al Balushi/OMA/10092702

Event/ID: CEI1*90 – Muscat (OMA) - 2016_CI_1515_E_S_01_01

Date: 26 February 2016

Prohibited Substances: Phenylbutazone, Oxyphenbutazone, Flunixin

I. COMPOSITION OF PANEL

Ms. Jane Mulcahy QC, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

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

3. Oral hearing: none

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016, 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"), 2nd edition, effective 1 January 2016.

FEI Controlled Medication Regulations ("ECM Rules"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2016, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Mohammed Sabilhassan 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

Below is 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 RUBY PARK XTREEM (the "**Horse**") participated at the CEI1*90 in Muscat, Oman, on 26 February 2016 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Mohammed Sabilhassan Al

Balushi who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").

- 1.2 The Horse was selected for sampling during the Event, on 26 February 2016.
- 1.3 Analysis of the blood sample no. 5546325 taken from the Horse at the Event was performed at the FEI approved laboratory, the LGC Laboratory on Newmarket Road, Fordham, Cambridgeshire, UK ("**LGC**"). The analysis of the sample revealed the presence of Phenylbutazone, Oxyphenbutazone and Flunixin in the plasma.
- 1.4 The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Flunixin. Phenylbutazone, Oxyphenbutazone (metabolite of Phenylbutazone) and Flunixin are non-steroidal anti-inflammatory drugs (NSAID) with anti-inflammatory and analgesic effects. These substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List. Furthermore, no valid Veterinary Form exists for the respective substances. Therefore, the positive finding for Phenylbutazone, Oxyphenbutazone and Flunixin in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 11 April 2016, the FEI Legal Department officially notified the PR and the Owner of the Horse through the Oman National Federation ("**OMA-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. 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 11 April 2016, 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 asked for the B-Sample to be analysed, and accepted the results of the A-Sample analysis.

4. Written submission by and on behalf of the PR

- 4.1 On 25 May 2016, the Owner of the Horse, Mr. Mohamed Ali Ahmed Al Balushi, apologized for a treatment error that had occurred. He further

explained that the rule violation was caused because he was still at the *"beginning of [his] course"* in capability and endurance races, and that an error in treatment was caused by his lack of knowledge of medications, the effect and duration of which differed from one manufacturer to another. In addition a veterinarian crew had been unavailable in the area where he practiced the sport. He stated that *"I have not been aware of the guidelines governing these medications and the effect duration of the medications on horses, furthermore, these guidelines are written in English and there are no designated veterinary clinics or services providers which made me do that by myself yet but I am willing to gain knowledge in this field, benefitting in the process from the esteemed FEI"*.

5. Provisional Suspension of PR

- 5.1 On 11 October 2016, the FEI requested the lifting of the Provisional Suspension of the PR. The FEI noted that the PR has been suspended for six (6) months, and argued that therefore circumstances under the prerequisites of Article 7.4.4 (ii) of the ECM Rules could be fulfilled.
- 5.2 On 12 October 2016, 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 12 October 2016, midnight CET.

6. Further proceedings

- 6.1 On 31 October 2016, the OMA-NF – upon request by the FEI – confirmed that Mr. Mohammed Ali Ahmed Al Balushi (FEI ID: 10103297) was the registered trainer of the Horse until February 2015, and was the registered Owner of the Horse at the time of the violation. Furthermore, the registered trainer at the time of the violation was Mr. Abdul Aziz Fahad Said Al Balushi (FEI ID: 10101833).
- 6.2 Moreover, the OMA-NF explained that the PR had not provided any explanation of the alleged rule violation, and that the Owner had not provided any further (in addition to his previous statement, as previously outlined) explanation either.
- 6.3 Finally, the OMA-NF confirmed that a previous hearing request had not been maintained by either the PR or the Owner of the Horse.

7. Response by the FEI

- 7.1 On 21 September 2016 and on 23 November 2016, the FEI provided its Response to the explanations provided on behalf of the PR.

7.2 In essence 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. 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. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Phenylbutazone, Oxyphenbutazone and Flunixin, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, neither the PR nor the Owner disputed the presence of those Prohibited Substance in the Horse's sample. Accordingly, the FEI had discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.
- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. To do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) how the Prohibited Substances entered the Horse's system and (ii) that he bore No Fault or Negligence for that occurrence; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulated, and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance(s) entered into the Horse's system. The FEI submitted in this context that the PR must provide clear and convincing evidence that proved how the Phenylbutazone, Oxyphenbutazone and Flunixin had entered the Horse's system. The PR in the case at hand did not submit any written explanation, and the Owner's submission did not contain any explanation of how the Prohibited Substances could have entered the Horse's body. Therefore, in the FEI's opinion, the PR had not met this strict threshold requirement. By not providing any information the PR not established the source of the Prohibited Substances.
- d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of was the "*personal duty*" of the PR following from Article 2.1.1 of the

ECM Rules, *i.e.*, his personal duty to ensure that “no Controlled Medication Substance is present in the Horse’s body”. In the case at hand it had not been established how the Prohibited Substances entered the Horse’s system. The FEI argued that there were two possible interpretations: either that there were no designated veterinarian clinics or service providers which could help the PR/Owner understand the rules, or that the lack of veterinary clinics or service providers led the PR/Owner to administer the medication. From an FEI perspective neither version of the explanation relieved the PR of his personal duty and responsibility under the EADCMRs, nor provided a valid excuse for a positive test.

e) Further, according to CAS jurisprudence (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, also referred to as “Glenmorgan decision”), the rider was, no matter what, the Person Responsible for the horse he was competing on, and could not delegate that duty to another person. The PR therefore had an obligation to ensure that no Prohibited Substances entered into the Horse’s system, and had to act with utmost caution in order to fulfil this duty. What the PR did not do was as fatal to this duty as what he did do. Hence a lack of awareness on his part of the relevant rules was no defence to the EAD rule violation in question.

f) The FEI further argued that it was the responsibility of the PR to know about the rules, which could be discovered by various routes. In this regard the Tribunal in a previous decision (Case 2014/CM01 - FEI Tribunal dated 25 June 2015) had stated as follows:

“Article 2 of the ECM Rules clearly required riders to know what constituted a rule violation, and that different standards, i.e. with respect to education and information by Lithuanian riders, could not be taken into account. Further, and in light of the fact that the PR was a professional rider, it was even more important that he informed himself of the rules and regulations applicable to his profession, and was further obliged to acquire the appropriate translation thereof, if necessary, for his understanding. Further, that it had also to be taken into consideration that he had competed as high as World Cup level, that he owned fifteen horses and was also riding other horses.” (para 9.12)

g) Moreover, the FEI argued that, through the FEI Clean Sport programme and in particular the “Athletes Guide” it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It should be noted that, in the Glenmorgan decision, CAS had stated that the Athlete’s Guide “contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form” and described the Athlete’s Guide as “required reading”.

h) Furthermore, making the PR *prima facie* responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the horse’s “doped condition”,

was a reasonable and justifiable stance. In this respect, CAS had endorsed (CAS 2015/A/4190 *Mohammed Shafi Al Rumaithi v. FEI*) the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, namely to "... *protect the welfare of the horse, and to ensure fair play...*".

- i) In the case at hand, the PR has not submitted any information or explanation in order to establish how the Prohibited Substances entered the Horse's system. The PR has therefore not discharged his burden of proving how the Phenylbutazone, Oxyphenbutazone and Flunixin got into the Horse's system, and therefore no elimination or reduction of the period of Ineligibility in this case was possible under Article 10.4 of the ECM Rules. Further, the PR could not rely only on the information provided by the Owner. It was well established in the case-law that if the PR did nothing or delegated the duty of care to a third person, he was still the Person Responsible for the horse in question. The Owner's explanation of the reason for the violation being lack of education and lack of knowledge about medications and their effect in horses, was - in the FEI's opinion - not enough in order to establish No (Significant) Fault or Negligence of the PR according to Articles 10.4 and Art. 10.5 of the ECM Rules. The FEI therefore respectfully submitted that the applicable period of Ineligibility on the PR had to be six (6) months.
- j) Further, the FEI reserved the right to open a case against the Owner, who had given a statement in the case at hand.
- k) Pursuant to Article 9 of the ECM Rules, the result of the PR and Horse combination obtained in the Competition should be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. Furthermore, since this was a case with a Controlled Medication Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI could disqualify all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the ECM Rules.
- l) 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 be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 1 500 CHF, and order the PR to pay the legal costs of 1 000 CHF that the FEI had incurred in these proceedings.

8. Jurisdiction

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

9. The Person Responsible

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

10. The Decision

- 10.1 As stated 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 and the Owner waive analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the LGC are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Flunixin in the sample taken from the Horse at the Event. Neither the PR nor the Owner contested the accuracy of the test results or the positive finding. These substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of Phenylbutazone, Oxyphenbutazone and Flunixin during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 10.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proved the objective elements of an offence by the PR, in accordance with Articles 2.1 of the ECM Rules.
- 10.3 In cases brought under Article 2.1 of the ECM Rules a strict liability principle applies as described in Articles 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 bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 10.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 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 or 10.5 of the ECM Rules.
- 10.5 The Tribunal takes note of the Owner's explanation of the positive finding, namely that it was caused due to a "treatment error". However, this is not sufficient in order to establish how the Prohibited Substances entered the Horse's system; the PR has to provide clear and convincing evidence in this respect.
- 10.6 As a result, the Tribunal 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 (Significant) 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.

11. Disqualification

For the reasons set forth above, the Tribunal disqualifies 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.

12. Sanctions

- 12.1 As a result of the foregoing, the period of Ineligibility imposed on the PR shall be six (6) months. The Tribunal takes note that the PR has been provisionally suspended from 11 April 2016 until and including 12 October 2016, i.e., six (6) months. The Tribunal finds, that the period of Provisional Suspension shall be credited against the period of Ineligibility imposed.
- 12.2 The 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**. The period of Provisional Suspension, effective from 11 April 2015, the date of imposition of the Provisional Suspension, to 12 October 2016, 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.
- 12.3 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 10.11.1 of the ECM Rules). Under Article 10.11.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

- 12.4 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.5 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 twenty-one (21) 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



Ms. Jane Mulcahy QC, one member panel