



DECISION of the FEI TRIBUNAL

dated 11 October 2018

Positive Anti-Doping Case No.: 2017/BS29

Horse 1: CONCORDIA 7 **FEI Passport No:** 103ZZ97

Event 1/ID: CH-EU-A 4 – Göteborg (SWE)/ 2017_CH-EU_0002_A_H4_01_01

Date: 21 – 27 August 2017

Prohibited Substances: Oripavine, Morphine and Codeine

Positive Anti-Doping Case No.: 2018/CM10

Horse 2: SOLO RYGATA XXI 17 **FEI Passport No:** 105WE35

Event 2/ID: CAI3*-H4 – Kladruby nad Labem (CZE)/ 2018_CI_0567_A_H4_01_01

Date: 19 – 22 April 2018

Prohibited Substances: Morphine

Person Responsible/NF/ID: Andreas Ruschitzka/AUT/10007005

I. COMPOSITION OF PANEL

Ms. Harveen Thauli, chair
Mr. Chris Hodson QC, member
Mr. Henrik Arle, member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1



January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**2017 GRs**"), and General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**2018 GRs**") (together "**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations, 2nd edition, effective 1 January 2016 ("**2017 EADCMRs**") and FEI Equine Anti-Doping and Controlled Medication Regulations, 2nd edition, effective 1 January 2018 ("**2018 EADCMRs**") (together "**EADCMRs**").

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

FEI Controlled Medication Regulations ("**ECM Rules**"), 2nd edition, changes effective 1 January 2018.

Veterinary Regulations ("**2017 VRs**"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq., and Veterinary Regulations ("**2018 VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1068 and seq. (together "**VRs**").

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Andreas Ruschitzka.

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunge shall be an additional Person Responsible."



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 – 2.8 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."

EAD Rules Art. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

EADCMRs APPENDIX 1 – Definitions:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Person Responsible* and/or member of the *Support Personnel's* degree of Fault include, for example, the *Person Responsible's* and/or member of the *Support Personnel's* experience, whether the *Person Responsible* and/or member of the *Support Personnel* is a *Minor*, special considerations such as impairment, the degree of risk that should have been perceived by the *Person Responsible* and/or member of the *Support Personnel* and the level of care and investigation exercised by the *Person Responsible* and/or member of the *Support Personnel* in relation to what should have been the perceived level of risk. In assessing the *Person Responsible's* and/or member of the *Support Personnel's* degree of Fault, the circumstances considered must be specific and relevant to explain the *Person Responsible's* and/or member of the *Support Personnel's* departure from the expected standard of behaviour. Thus, for example, the fact that the *Person Responsible* would lose the opportunity to earn large sums of money during a period of



Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

III. DECISION

1. Parties

- 1.1 The Person Responsible (“**PR**”), Mr. Andreas Ruschitzka, is a driver from Austria.
- 1.2 The Fédération Equestre Internationale (the “**FEI**” and together with the PR, the “**Parties**”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Further proceedings

On 3 October 2018, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2017/BS29 CONCORDIA 7 &



2018/CM10 SOLO RYGATA XXI 17 (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

I – Case Summary (as provided to the Tribunal by the Parties as part of the Agreement referred to Article 3 below)

- “3.1 The PR took part with his first horse CONCORDIA 7 (the “Horse 1”) at CH-EU-A 4 - Göteborg (SWE), from 21-27 August 2017 (the “Event 1”). The PR took part with his other horse SOLO RYGATA XXI 17 (the “Horse 2”) at the CAI3*-H4 - Kladruby nad Labem (CZE) 19-22 April 2018 (the “Event 2”). Horse 1 and Horse 2 together referred to as the Horses. Event 1 and Event 2 together referred to as the Events. As a member of the Austrian Equestrian Federation (the “Austrian NF”), the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 3.2 The Horses were selected for testing on 27 August 2017 and 20 April 2018. The resulting samples were transported to the FEI approved LGC Newmarket Road Laboratory (“LGC”) in Cambridgeshire, UK for analysis.
- 3.3 By notification letter dated 12 October 2017 and 11 June 2018 the FEI informed Mr. Andreas Ruschitzka, in his capacity as the Person Responsible, and the Austrian NF of an alleged violation by Mr. Andreas Ruschitzka of Article 2.1 (The Presence of a Banned Substance or its Metabolites or Markers in a Horse’s Sample) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules. No Provisional Suspension was imposed on the PR since all Prohibited Substance present in the samples, namely Oripavine, Morphine and Codeine are Specified Substances.
- 3.4 Oripavine is an opiate analgesic and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Equally, Morphine and Codeine are opiate analgesic and are classified as a Controlled Medication Substance. Oripavine, Morphine and Codeine have analgesic effects. The positive finding of Oripavine, Morphine and Codeine in the Horse’s sample gives rise to an Anti-Doping Rule Violation under the FEI Equine Anti-Doping and Controlled Medication Regulations. Oripavine, Morphine and Codeine are Prohibited Substances identified as Specified Substances on the Prohibited List. The presence of Oripavine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding. Codeine is a Specified Substance when detected as a metabolite of Morphine.

- 3.5 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 11 December 2017, had been imposed on the Horse 1.
- 3.6 In the Notification Letters, the PR was informed that he had the right to request that the Horses' B Sample be analysed. The PR did not request for the B Samples analysis. According to Art. 7.1.4 (c) of the EADCM Regulations the right to promptly request the B sample analysis has been given and by failing such request the B sample analysis is deemed waived.
- 3.7 The PR submitted information in relation to his two cases as follows:
1. Emails and Explanations - 28 March 2018
 2. PR Explanations
 3. Veterinary Records
 4. Emails - 20 August 2018
 5. Feed information
 6. Results feed analysis Köln
 7. LGC Elective Testing
 8. Feed Company Statement
 9. Feed Company Analysis Results
 10. Emails PR 28 August 2018
- 3.8 The FEI also enquired information from the Austrian Trotting as follows:
11. Statement Austrian Trotting
 12. Analysis Results Trotting
- 3.9 The PRs submission can be summarised as follows:
- Initially the PR had no idea how the substance entered the body of his horses.
 - He is an amateur driver and only competes for pleasure, hence his main object is to take the best possible care of his horses.
 - None of the veterinary records shows any treatment with Morphine.
 - The PR had used the same feed from the same producer, a major feed provider in Austria, for many years.
 - The PR analysed and investigated the feed given to both horses from the feed producer Königshoffer, which confirmed the presence of Morphine, and its metabolites.
 - The PR further did elective testing at LGC after changing the feed, which confirmed a negative result.
 - The feed producer Königshoffer confirmed in a statement the traces of Morphine Codeine and Thebaine in their products.

- There had been several other cases at national level in Austria, where it has been confirmed that feed from Königshoffer was the result of the positive Morphine findings.

3.10 Based on the submissions, the FEI therefore recognises the contaminated feed from Königshoffer was the source of the positive findings in both the horses. Especially since in case where traces of those substances appear together, and in particular if Oripavine is present in combination with Morphine, it may indicate the ingestion of poppy seed."

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 3 below)

"4.1 Specified Substances are substances which are more likely to have been ingested by Horses for a purpose other than the enhancement of sport performance, for example, through a contaminated food substance. Oripavine, Morphine and Codeine are all classified as Specified Substances. The presence of Oripavine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding.

4.3 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF15,000 shall also be imposed and appropriate legal costs.

4.4 Article 10.4 of the EAD Rules states *"If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.6 below."* Article 10.4 of the EAD Rules also states that it *"only applies in exceptional circumstances"*.

4.5 Based on the evidence and documentation supplied by the PR (as

described in Section 3 above), and the science available the FEI has evaluated whether or not Article 10.4 was applicable. The FEI has considered if the PR has established by a balance of probabilities, a plausible explanation of how the Prohibited Substance had entered the Horses' system. In this regard, the FEI finds that there is a plausible explanation as to how the Prohibited Substance entered the Horse's system based on the information that the Horse had been fed with feed from the feed producer Königshoffer that had confirmed traces of Morphine and its metabolites. Further, the presence of Oripavine together with Morphine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding. Additionally, there are several other positive cases from this region where horses had been fed with feed from the same feed producer.

- 4.6 The FEI finds that the contamination of the feed from the producer Königshoffer is the plausible explanation for how the Prohibited Substances entered the Horses' system. The FEI is thus satisfied that the requirement of establishing by a balance of probabilities how the Prohibited Substance entered the Horses' system has been fulfilled.
- 4.7 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is satisfied that the PR had demonstrated that he bore no Fault or Negligence since he had procedures in place in order to prevent positive findings, such as:
- The horses are stabled in private stables.
 - Nobody else but the PR and his grooms take care of the horses.
 - The boarding horses are separated from the competition horses.
 - The PR and his grooms are in full control of his horses, and they feed only oats, pellets and hay. No feed supplements are given and he had the same feed supplier for over 10 years.
 - The PR is always checking with the vets any question of food or treatment.
 - If there is a medication treatment by the vets, the grooms or the PR is present.
- 4.8 Königshoffer is a major feed provider in the Austria/Southern German region and the PR has fed feed from this producer for many years. The same applies to many top riders in this region. He therefore had no reason to doubt those products. The PR could not reasonably have been expected to take any further measures which would have prevented the Prohibited Substances entering the Horse's system, neither could he have suspected that the feed given to his horses for many years, all of a sudden was contaminated with poppy seed. The FEI is of the opinion



that the circumstances of the PR are unfortunate and could not have been foreseen by him as a Person Responsible. Thus in this case, the only plausible explanation for the presence of the Prohibited Substances is such contamination of the feed given to the Horses. Therefore the FEI is satisfied that the PR bears No Fault or Negligence for the anti-doping rule violation.

- 4.9 The FEI accepts that the circumstances of the case were exceptional on the basis that the presence of the Banned and Controlled Substances in the Horses' Sample and particularly the presence of Oripavine, are consistent with Poppy Seed contamination. Further, there are several other cases from the very same region, who all have been confirmed to feed products from the same producer.
- 4.10 The FEI is satisfied that the criteria for the application of Article 10.4 of the EAD Rules had been met in that (i) the PR has established how the Banned Substances came to enter the Horses' system, (ii) the PR has demonstrated that he bore No Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated and that no other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply."

3. Agreement between Parties

On 3 October 2018, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

- 5.1 All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping Rules ("EAD Rules")
- 5.2 In the matter of the Adverse Analytical Finding related to the two samples, which were collected from Mr Andreas Ruschitzka's horses CONCORDIA 7 and SOLO RYGATA XXI 17 (the "Horses") at CH-EU-A 4 - Göteborg (SWE), from 21-27 August 2017 and the CAI3*-H4 - Kladruby nad Labem (CZE) 19-22 April 2018 (the "Events"), Mr Andreas Ruschitzka (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties") agree, in accordance with Article 7.6.1 (*Agreement between Parties*)



of the EAD Rules, on the following:

- 1) The **Presence of the Banned and Controlled Medication Substance(s) in the Horse's sample** constitutes a violation of Article 2.1 of the EAD Rules.
- 2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.4 of the EAD Rules (*Elimination of the Period of Ineligibility Where there is no Fault or Negligence*) are fulfilled in the cases at hand and that the applicable period of Ineligibility shall be eliminated.
- 3) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall **not be considered a prior violation** for the purpose of Article 10.8 (*Multiple Violations*) of the EAD Rules.
- 4) **Provisional Suspension of the Horse:**
The PR has not contested the Provisional Suspension imposed on the Horse 1 and therefore accepts that it remained in place until 11 August 2017.
- 5) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horses at the Events are disqualified, including forfeiture of medals, points and prizes.
- 6) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Mr Andreas Ruschitzka, including the horses CONCORDIA 7 and SOLO RYGATA XXI 17.

Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.
- 7) **No Other Sanctions:**
No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs.
- 8) **Right of Appeal:**



This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

9) **Public Disclosure:**

This agreement is subject to approval of the FEI Tribunal, who will issue a final decision in the case. All final decisions of the FEI Tribunal are published on the FEI website.

End Quote

4. Jurisdiction

- 4.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EADCMRs.
- 4.2 As a member of the Austrian National Federation, the latter being a member of the FEI, the PR was bound by the EADCMRs.
- 4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

- 5.1 At the outset, the Tribunal accepts that the Königshoffer feed was contaminated and the source of the Morphine and Oripavine found in the Horses' samples. The Tribunal further accepts that the PR did not have any reason to doubt the reliability of the Königshoffer feed, which he fed to his horses for many years, or suspect that it was contaminated with Banned and Controlled Substances. The Tribunal also notes that there have been several cases at the national level in Austria where contaminated Königshoffer feed resulted in positive findings of Morphine and Oripavine in horses.
- 5.2 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal does not object to or disapprove the terms of the Agreement and is satisfied the Agreement constitutes a *bona fide* settlement of the present case.

- 5.3 In accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Article 3 above. Further, this Decision shall terminate the present case 2017/BS29 CONCORDIA 7 & 2018/CM10 SOLO RYGATA XXI 17.

6. Decision

- 6.1 The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Andreas Ruschitzka, concerning the case 2017/BS29 CONCORDIA 7 & 2018/CM10 SOLO RYGATA XXI 17 is hereby ratified by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as follows:

- 1) ***The Presence of the Banned and Controlled Medication Substance(s) in the Horse's sample*** constitutes a violation of Article 2.1 of the EAD Rules.
- 2) ***Ineligibility Period:***
The Parties agree that the prerequisites for Article 10.4 of the EAD Rules (Elimination of the Period of Ineligibility Where there is no Fault or Negligence) are fulfilled in the cases at hand and that the applicable period of Ineligibility shall be eliminated.
- 3) *In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall **not be considered a prior violation** for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules.*
- 4) ***Provisional Suspension of the Horse:***
The PR has not contested the Provisional Suspension imposed on the Horse 1 and therefore accepts that it remained in place until 11 August 2017.
- 5) ***Disqualification of Results:***
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horses at the Events are disqualified, including forfeiture of medals, points and prizes.
- 6) ***Full Settlement and Resolution:***
This agreement resolves and settles all outstanding matters between the FEI and the PR, Mr Andreas Ruschitzka, including the horses CONCORDIA 7 and SOLO RYGATA XXI 17.



Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

7) **No Other Sanctions:**

No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs.

8) **Right of Appeal:**

This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

9) **Public Disclosure:**

This agreement is subject to approval of the FEI Tribunal, who will issue a final decision in the case. All final decisions of the FEI Tribunal are published on the FEI website.

6.2 This Decision is subject to appeal in accordance with Article 12.2 of the EADCMRs. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

6.3 This Decision shall be published in accordance with Article 13.3 of the EADCMRs.

IV. DECISION TO BE FORWARDED TO:

- a. The Person Responsible: Yes**
- b. The President of the NF of the Person Responsible: Yes**
- c. The Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in blue ink, which appears to read 'H. Thauli', is centered within a light gray rectangular box.

THE CHAIR, Ms. Harveen Thauli