



## **DECISION of the FEI TRIBUNAL**

**dated 12 April 2018**

**Positive Controlled Medication Case No.:** 2017/CM17

**Horse:** POLY DE COAT FRITY

**FEI Passport No:** 103GN49/BRN

**Person Responsible/NF/ID:** Fahad Helal Mohamed Al Khatri/BRN/10065846

**Event/ID:** CH-M-YJ-E 120 – Valeggio sul Mincio (ITA)/2017\_CH-M\_0002\_E\_YJ\_01

**Date:** 22 - 24 September 2017

**Prohibited Substances:** Harpagoside

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

Dr. Armand Leone (USA), 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 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2017, 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"), 2<sup>nd</sup> edition, effective 1 January 2016.

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

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Fahad Helal Mohamed Al Khatri.

**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 lunger shall be an additional Person Responsible."

**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."

**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 his or her 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 and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

#### **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 POLY DE COAT FRITY (the "**Horse**") participated at the CH-M-YJ\_E 120 in Valeggio sul Mincio, Italy, from 22 to 24 September 2017 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Fahad Helal Mohamed Al Khatri 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 23 September 2017.
- 1.3 Analysis of the blood sample number 5556761 taken from the Horse at the Event was performed at the FEI-approved Laboratory, the LGC, Newmarket Road Laboratory (the "**Laboratory**") in Fordham, Cambridgeshire, United Kingdom. The analysis of the sample revealed the presence of Harpagoside in the blood and urine.
- 1.4 The Prohibited Substance detected is Harpagoside. Harpagoside is an anti-inflammatory drug with analgesic effects and classified as Controlled Medication Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Furthermore, no valid Veterinary Form exists for the substance. Therefore, the positive finding for Harpagoside in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

## **2. The Further Proceedings**

- 2.1 On 7 November 2017, the FEI Legal Department officially notified the PR through the Bahrain National Federation ("**BRN-NF**"), as well as the owner of the Horse ("**Owner**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences.
- 2.2 The Notification Letter included notice that since a Controlled Medication Rule violation for the Horse has been recorded in January 2016 (Case: 2016/FT03 POLY DE COAT FRITY), the PR is not eligible for the Administrative Procedure pursuant to Article 8.3 of the ECM Rules.

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

- 3.1 Together with the Notification Letter of 7 November 2017, the PR and the Owner 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 The PR or the Owner did not request for the B-Sample to be analysed. Hence, they accepted the results of the A-Sample analysis.

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

The PR submitted a statement (dated 11 November 2017) by Dr. Sophie de la Farge, veterinarian at BMC & MENNESSIER in Chantilly, France. Dr. de la Farge stated as follows:

*"The horse POLY DE COAT FRITY property of the Royal Endurance Team of Barhain tested positive for Harpagosie the day of the the Young Riders Endurance World Championship in Verona.*

*It is likely that the horse was given ARTIFLEX (product marketed by the Belgium firm AVSEQUINE and containing Harpagophytum, prohibited substance under the FEI regulations, instead of NEW ARTIFLEX different product of the same firm, which doesn't contain Harpagophytum.*

*This, in my opinion, would explain why the horse POLY DE COAT FRITY tested positive for Harpagosie the day of the above-mentioned race.*

*Should you request any further information don't hesitate to contact the writer."*

#### **5. Written Response by the FEI**

- 5.1 On 8 March 2018, the FEI provided its Response to the explanations received by the PR.
- 5.2 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 Harpagoside and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence of the Prohibited Substance in the Horse's sample. Accordingly, the FEI had discharged its burden of establishing that the PR has 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 ECM 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 offence 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 Substance entered the Horse's system and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Controlled Medication Substance; 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 Harpagoside has entered the Horse's system. The veterinarian explained that it was likely that the Horse was given ARTIFLEX, a product marketed by the Belgium firm AVSEQUINE and containing Harpagophytum, instead of NEW ARTIFLEX, a different product of the same firm, which does not contain Harpagophytum. The FEI found that it could be a plausible explanation of the positive finding, but in order to further establish that this was the source of the substance, information such as a confirmation on how and when the Horse was administered the product ARTIFLEX was necessary. The FEI was of the opinion that so far the PR has not established by evidence the source of the positive finding and hence not established how the substance entered the body of the Horse.
- d) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation 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*".
- e) The FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*"<sup>1</sup>, it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It had to be noted that, in the *Glenmorgan decision*<sup>2</sup>, 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*".
- f) Furthermore, CAS in the *Royal des Fontaines case*<sup>3</sup> had endorsed the

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<sup>1</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

<sup>2</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

<sup>3</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI

rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- g) In the *Glenmorgan* case (in para 209) the Panel confirmed that the rider was best fit to control the Horse before a competition. *"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*
- h) In light of the stated CAS jurisprudence on this point, the FEI respectfully submitted that 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 positive test results was a reasonable and justifiable stance. Further, as the CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he is competing with, and cannot delegate that duty to another person. He therefore has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with utmost caution in order to fulfil this duty. Conclusions to be drawn from the case law were that the duty of care was very high and that this duty of care was non-delegable. But also that Persons Responsible were responsible for their Support Personnel and the medical treatments given to their horses by their veterinarians, trainers or grooms.
- i) In the case at hand, so far in the proceedings, the PR has not provided any evidence in relation to the allegedly given product ARTIFLEX, nor any evidence in order to establish No (Significant) Fault or Negligence for the rule violation. The FEI was of the opinion that no evidence has been provided that would allow any elimination or reduction of the period of Ineligibility in this case. The FEI invited the PR to submit further evidence in relation to the product given to

the Horse and also in relation to his degree of fault and negligence for the rule violation.

- j) The FEI therefore respectfully submitted that the period of Ineligibility of the PR should be six (6) months, unless there was new evidence in relation to the product and the PR's degree of fault and negligence. If new evidence was provided the FEI left it for the discretion of the Tribunal to impose an accurate sanction on the PR for this ECM Rule violation.
- k) The PR and Horse combination obtained in the Competition had to 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, 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, might be disqualified 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 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 fined the PR in the amount of 2,000 CHF, and ordered the PR to pay the legal costs of 1,000 CHF that the FEI had incurred in these proceedings.

## **6. Further proceedings**

Even though the FEI invited the PR to provide further evidence in relation to the product given to the Horse and also in relation to his degree of fault and negligence for the rule violation, the PR did not submit anything further, or request for a hearing in the present case.

## **7. Jurisdiction**

The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD 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 was the rider of the Horse at the Event.



## **9. The Decision**

- 9.1 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 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 finding of the Laboratory is accurate. The Tribunal is satisfied that the test results evidence the presence of Harpagoside 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. The substance is classified as Controlled Medication Substance under the FEI List. The presence of Harpagoside during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence by the PR, in accordance with Articles 3.1 of the ECM Rules.
- 9.3 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.
- 9.4 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 Substance entered the Horse's system.
- 9.5 The Tribunal takes note of the veterinary's explanations provided by the PR for the positive finding, namely that it was likely that the Horse was given ARTIFLEX, a product marketed by the Belgium firm AVSEQUINE and containing Harpagophytum, instead of NEW ARTIFLEX, a different product of the same firm, which does not contain Harpagophytum. The Tribunal however finds that the PR's explanation is a mere allegation, and the PR has not provided any evidence that the Horse was administered ARTIFLEX, allegedly containing the Prohibited Substance found in the Horse's sample. As a result, the Tribunal holds that the PR has not established - on a balance of the probability, as required under Article 3.1 of the ECM Rules - how the Prohibited Substance entered the Horse's system.
- 9.6 In the absence of establishing on the balance of the probabilities how the Prohibited Substance entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.
- 9.7 Even if the route of entry was established, the Tribunal could still not conclude that No (Significant) Fault or Negligence applies in this case for the following reason: under Article 2.1.1 of the ECM Rules, it is the

PR's personal duty to ensure that no Prohibited Substances are present in the Horse's system during an Event without a valid Veterinary Form, and the PR has not provided any information/evidence on whether any procedures were in place or what due diligence was exercised to fulfil this duty.

- 9.8 Therefore, no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.

## **10. Disqualification**

For the reasons set out above, the Tribunal disqualifies the Horse and the PR from the Competition and the entire Event and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

## **11. Sanctions**

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR shall be six (6) months.
- 11.2 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**, commencing on the date of this decision. Therefore, the PR shall be ineligible through **11 October 2018**.
  - 2) The PR is fined **three thousand Swiss Francs** (CHF 3,000,-).
  - 3) The PR shall contribute **one thousand Swiss Francs** (CHF 1,000,-) towards the costs of this procedure.
- 11.3 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).
- 11.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the ECM Rules).

- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.6 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**



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**Dr. Armand Leone, one member panel**