



DECISION of the FEI TRIBUNAL

dated 26 June 2019

Case No.: 2018/01

Horse/Passport: GAVOTTE DES PINS/105PJ94/QAT

Person Responsible/NF/ID: Ahmed Mubarak Ahmed AL KUWARI/QAT/10113516

Support Personnel/NF/ID: Mohammed Misfer M D AL HABABI/QAT/10113220

Event/ID: CEI1* 80 – Doha, Mesaieed (QAT), 2018_CI_1697_E_S_02_01

Date: 3 February 2018

Alleged Violation: Evading, Refusing or Failing to Submit to Sample Collection

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

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 and the Trainer.
- 3. Oral hearing:** On 12 June 2019 – via telephone conference.

Present:

The FEI Tribunal Panel

Ms. Erika Riedl, FEI Tribunal Clerk

For the Support Personnel:

Mr. Mohammed Misfer M D AL HABABI, Support Personnel

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel

Ms. Ana Kricej, FEI Junior Legal Counsel

III. 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 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

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

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Ahmed Mubarak Ahmed AL KUWARI

3. Support Personnel: Mr. Mohammed Misfer M D AL HABABI

4. 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."

EAD Rules Art. 2: "Persons Responsible and their Support Personnel shall be responsible for knowing what constitutes an EAD Rule violation and the substances and methods which have been included on the Equine Prohibited Substances List and identified as Banned Substances.

Where Banned Substances or Banned methods are involved, the following shall constitute EAD Rule violations: (...)

2.3 Evading, Refusing or Failing to Submit to Sample Collection

2.3.1 Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after Notification (in accordance with the FEI Veterinary Regulations) or to comply with all Sampling procedure requirements including signing the Sampling form or otherwise evading Sample collection.

2.3.2 It is each Person Responsible's personal duty to ensure that if the Horse with/on which they competed or will compete is selected for Sampling and a notification of Sampling in accordance with the FEI Veterinary Regulations has taken place, such Horse is submitted to Sample collection and that all Sampling procedure requirements are met.

2.3.3 Accordingly, although it is permissible for the Person Responsible to delegate the submission and supervision of the Horse to a third party, the Person Responsible remains responsible for the Horse throughout the Sample collection process and for:

- (i) any evasion of Sample collection; and/or
- (ii) any refusal or failure, without compelling justification, to submit the Horse to Sample collection; and/or
- (iii) any failure to comply with any or all of the Sampling procedure requirements, including signing the Sampling form.

2.3.4 It is not necessary to demonstrate intent, fault, negligence or knowledge in relation to any delegation relating to the Sampling process or to the acts of a relevant third party in order to establish an EAD Rule violation under this Article 2.3."

Definition of Support Personnel, Appendix 1 of the EADCMRs:

"Support Personnel. Any coach, trainer, athlete, Horse Owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports Competition. Veterinarians are included in the definition of Support Personnel with the understanding that they are professionals subject to professional standards and licenses. An allegation that a veterinarian violated an EADCM Regulation will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation."

Article 1098.2 of the VRs: "PRs are strictly liable and responsible for their Horse(s) at all times. PRs and their Horse(s) may be subject to inspection for compliance with all applicable FEI rules and regulations by FEI Officials at any time during an Event."

Article 1099.1 of the VRs: "PRs must ensure that they and their Horse(s) comply with all aspects of these VRs, and EADCMRs including but not limited to: (...) (i) all provisions related to the implementation of the EADCMRs and Elective Testing; (...)"

Article 1071.4 of the VRs: "Following notification, the PR or a member of their Support Personnel must accompany the Horse to the Testing Veterinarian or VD and witness the sampling procedure."

Article 1068.6 of the VRs: "The PR is responsible for the Horse at all times."

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 GAVOTTE DES PINS (the "**Horse**") participated at the CEI1* 80 in Doha, Mesaieed, Qatar, on 3 February 2018 (the "**Event**"), in the discipline of Endurance.
- 1.2 Mr. Ahmed Mubarak Ahmed AL KUWARI, the Person Responsible (the "**PR**") was the rider of the Horse at the Event. Mr. Mohammed Misfer M D AL HABABI was the registered Trainer (the "**Trainer**" or the "**Support Personnel**") for the Horse at the Event (together with the FEI the "**Parties**"). Neither role is disputed by the PR or the Trainer.
- 1.3 The Horse was selected for Sampling during the Event. Furthermore, neither Party disputes that Notification of Sampling occurred. However, no Samples were ultimately taken.

2. The Proceedings

- 2.1 The alleged violation of Evading, Refusing or Failing to Submit to Sample Collection (Article 2.3 EAD Rules) was officially notified to the PR and to the Trainer through the Qatar Equestrian Federation ("**QAT-NF**"), on 5 March 2018. Furthermore, pursuant to Article 7.4.2 of the EAD Rules, the FEI also provisionally suspended the PR and the Trainer as of 5 March 2018.
- 2.2 Together with the Notification Letter the FEI submitted several reports from the Event, namely the FEI Veterinary Report, FEI Technical Delegate Report, and the FEI Chief Steward Report, as well as Emails from Officials.
- 2.3 On 6 June 2018, the Trainer submitted his explanations for the alleged rule violation. The PR did not submit any explanations.
- 2.4 On 8 May 2019, the FEI further submitted its Response.
- 2.5 On 12 June 2019, a final hearing was held. Whereas the Trainer previously informed the Tribunal that the PR would also attend the hearing, the PR ultimately chose not to attend the hearing, nor inform the Tribunal of the reasons for his non-attendance.

3. Written submission by Trainer

- 3.1 On 9 June 2018, the Trainer submitted as follows with regard to the

alleged rule violation:

"First of all, I want to apologize for this delay from me to explain what happen in this case, and this delay was due to the military engagement.

By talking about the case, I refuse all that had been attributed to me in the case (Evading Sample Collection) with me as trainer (ID: 10113220) and the horse (Gavotte Des Pins – Id: 105pj94) and the rider (Id: 10113516).

Where I assure to you, that what happened was not intentional, and I was not refuse the doping test, I was had 4 horses in competition, and I was in race track with other horses and I had a new grooms that they not understand the stewards instructions, and I assure to you that not me or rider or any one refuse the doping test by intentional.

For me as owner and trainer, I know the FEI rules, and I will never do like this violation that I know the punishment for this kind of violations, also I had doping case before 3 years and I am very careful with in following FEI rules, and the competition was qualifiers without any prizes, so I don't have the motivation to do this violation if I am so accused of this case, I want to assure to you that what happened I misunderstanding between the grooms and steward and I didn't refuse the blood test because I wasn't there !!, I full respect to FEI rules and I know the punishment for this violation of this case, so it's unreasonable to do something that I know his punishment.

And according to the rider, I assure to you, that the rider leave the race directly after the horse arrive the finish line and before the vet check, because he had exams in high school and he didn't know anything about that case.

Finally, I appreciate you justice, and your understanding for main points on my case, and I full trust in fairness to me."

4. Written submission by the FEI

- 4.1 On 8 May 2019, the FEI submitted its Response to the explanations provided by the Trainer.
- 4.2 Together with the Notification Letter the FEI submitted several reports from the Event, namely the FEI Veterinary Report, FEI Technical Delegate Report, and the FEI Chief Steward Report, as well as Emails from Officials.

- 4.3 In essence, those reports and officials confirmed that the Horse had been randomly selected for Sampling at the Event, was notified and sent to the MCP box with a steward. However, the Trainer pulled the Horse away, verbally declared his refusal for MCP and refused to sign any papers. In the following, the President of the Ground Jury had tried to find the Trainer and they had tried to unsuccessfully call him several times. However, the Trainer and Horse had already left the venue. Further, since the Horse finished the ride and passed the final vet gate in 11th position they could not disqualify it.
- 4.4 To start with, the FEI submitted that the FEI believed that there was enough evidence for showing that the Trainer on purpose avoided the sample collection, since the Trainer verbally declared to the steward his refusal to MCP, pulled his mare away of the MCP boxes and refused to sign any papers. In addition, all officials were naming and identifying the very same rider, trainer and horse for this behaviour.
- 4.5 Further, the FEI highlighted that Evading, Refusing or Failing to Submit the Horse to Sample Collection was a very serious offence and the FEI has a zero-tolerance for such behaviour from a registered FEI Athlete and Trainer. Any such behaviour was intentional, unless compelling justification existed. The CAS case law on this matter was clear, in order to apply compelling justification to avoid the standard sanction for intentional violations, there needed to be supporting evidence.¹ In addition, the behaviour to avoid sample collection in itself should be seen as an aggravating circumstance.
- 4.6 Pursuant to Article 2.3 of the EAD Rules, the PR has a “personal duty” to submit the Horse to Sample collection where the Horse is selected for Sampling. Although it was permissible for the PR to delegate the submission and supervision of the Horse to a third party, the PR remained responsible for the Horse throughout the Sample collection process and for: any evasion of Sample collection; and/or refusal or failure, without compelling justification, to submit the Horse to Sample collection; and/or any failure to comply with any or all of the Sampling procedure requirements, including signing the Sampling form. It was also clear from the VRs that the PR is strictly liable and responsible for his Horse at all times and remains responsible for the supervision of the Horse at all times, and must bring the Horse to sample collection. It was therefore irrelevant if the PR intentionally or not evaded the sample collection. A refusal by the Trainer as his support personnel, actually applied to the PR’s failure in his duty of care. The duty of care was non-delegable and always attributed to the PR for each and every

¹ The FEI submitted the following case law as example: CAS 2014/A/3668 Maxim Simona Raula v. Romanian National Anti-Doping Agency (RADA), award of 4 June 2015, para 48.

horse.

- 4.7 In the case at hand there was clearly no compelling justification that could defend such behaviour and in any case neither the PR nor the Trainer provided any evidence that could indicate the application of compelling justification.
- 4.8 Additionally, it could not be ignored that it was not the first time that the PR's family had been involved in a similar violation.² At the time it was not compulsory to register as Trainer for a horse. The same person as in this case was registered as trainer on horses of the PR. Even if the PR and Trainer explain that it was not intentional to refuse the sample collection, both the former similar case and the Officials confirm that this behaviour had taken place. The word of several Officials from the Event could not be ignored. While the Trainer claimed to have been with other horses and that he had new grooms that did not understand the steward's instructions, the FEI Officials clearly state that the Trainer was personally present and refused to submit the Horse to sample collection. The FEI also doubted the information by the Trainer that the PR had to attend exams, especially since there was no proof of this speculation.
- 4.9 The FEI was convinced that the Trainer actually refused and in fact intentionally evaded to submit the Horse to sample collection. The FEI was therefore of the strong opinion that the refusal to submit to sample collection was nothing but intentional. In any case, there was no corroborated evidence showing that this refusal was due to compelling justification.
- 4.10 The FEI respectfully submitted that the period of Ineligibility imposed on the PR and Trainer shall be at least two (2) years in accordance with Article 10.3.1 of the EAD Rules. Further, the FEI kindly requested the Tribunal to evaluate if there are aggravating circumstances that applied in the case at hand. Finally, the FEI requested the Tribunal to impose a fine of 3,000 CHF to the PR and Trainer each, and to order the PR and Trainer to pay the legal costs of 1,500 CHF each that the FEI has incurred in these proceedings.

5. Final Hearing

- 5.1 During the Preliminary Hearing, and where not mentioned otherwise in the following, both Parties maintained their written submissions. The

² Case 2013/BS04 NAJMAH, Final Tribunal Decision dated 23 June 2016.

Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.

- 5.2 The Trainer further explained that he was a lawyer and that he was perfectly aware of the FEI Rules and Regulations. Further, for his defence he put forward an ongoing conflict including civil law suits with the QAT-NF and the Qatar Endurance Committee, and alleges that the Officials were not independent from the Endurance Committee, and potentially under pressure to write their statements. Later on, upon the FEI explaining that one report received by the FEI was from an Official from Egypt, the Trainer stated that he did not know this individual.
- 5.3 He further stated that he was never with the Horse, he was not allowed to go with the Horse to the vet area or clinic, and that he could not have taken the Horse to the sampling as he had problems with his leg, which other trainers could confirm.
- 5.4 Finally, he stated that he had had not motivation to administer any Prohibited Substances to the Horse for the Event, as there had been no prize money for the Event. The Trainer confirmed that he has been accounted for three (3) earlier Controlled Medication cases.
- 5.5 The FEI argued that three independent FEI Officials all separately confirmed the Trainer's refusal to sample collection, and the FEI saw no reason why they would report something to the FEI without the incident having happened. The Trainer had provided no evidence contradicting the FEI Officials. Furthermore, individuals sitting on the Endurance Committee were generally not allowed to be officiating at the same time. The Trainer had a previous history with EADCMRs rule violations, and the PR's family had a history with refusals to submit to sample collection.
- 5.6 Ultimately, the FEI argued that no matter what the reasons where, a refusal to submit to sample collection has still taken place, and neither the PR nor the Trainer had provided any evidence that could be accepted as compelling justification. Furthermore, the present violation was not the first violation of the Trainer, and had to be counted as second violation.

6. Jurisdiction

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

7. Person Responsible

- 7.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event.

8. The Support Personnel

- 8.1 The Trainer has been registered as the trainer for the Horse at the Event. The Tribunal finds that the Trainer can therefore be considered as Support Personnel in the meaning of the EADCMRs. As a result, the Trainer was bound by FEI Rules, including the EADCMRs.

9. The Decision

- 9.1 In order to establish a violation of Article 2.3 of the EAD Rules the FEI has to establish that in a given case, the prerequisites of Article 2.3 of the EAD Rules have been fulfilled. Pursuant to Article 3.1 of the EAD Rules the standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in mind the seriousness of the allegation which is made. In the case at hand the Tribunal is satisfied that a Notification to submit to Sample collection occurred in accordance with the FEI Veterinary Regulations. Furthermore, neither the PR nor the Trainer contested that a Notification occurred. The Trainer does however contest that he was present with the Horse at the MCP boxes. Ultimately, no sample has been collected from the Horse.
- 9.2 The Tribunal notes the various reports from the Officials at the Event, which all identify the Trainer as having been the person who pulled the Horse away, verbally declared his refusal for MCP and refused to sign any papers. The Tribunal also notes the Trainer's main arguments that the Officials were providing wrong statements in essence due to an ongoing conflict the Trainer had with the QAT-NF, or certain persons within the QAT-NF. The Tribunal has however received no evidence to support why the Tribunal should not believe that the reports from the Veterinary Delegate, the Technical Delegate and the Chief Steward are correct.
- 9.3 More specifically, the Trainer himself explained that he did not know one of the Officials who is also not from Qatar. Furthermore, the Trainer alleged that he had neither the right to enter the sampling

area, nor would he have been able to accompany the Horse due to some leg issues. However, the Tribunal has received no evidence supporting those allegations. In addition, the Tribunal does not find these explanations as credible, also given that the Trainer only submitted them at the final hearing, and not already with his written submission.

- 9.4 The Trainer does not argue nor submit any compelling justification for refusing to submit the Horse to Sample collection after Notification.
- 9.5 The Tribunal notes that the PR has not provided any explanations with regard to the allegation of the EAD Rules violation for Evading, Refusing or Failing to Submit to Sample Collection, nor the reasons for non-submission or refusal to submit the Horse to sampling. The Trainer explained on the PR's behalf that he had to leave the Event in order to attend an exam. However, no evidence in this respect has been provided to the Tribunal. The Tribunal would neither find that this would constitute a compelling justification for refusing or failing to submit the Horse to Sample collection.
- 9.6 As a result, the Tribunal finds that the FEI has thus established an Anti-Doping Rule violation, and has thereby sufficiently proven the objective and subjective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.7 Pursuant to Article 2.3 of the EAD Rules, a Person Responsible, such as the PR in the present case, is permitted to delegate the submission and supervision of the Horse to a third party, the PR remains however responsible for the Horse throughout the Sample collection process and for any refusal or failure, without compelling justification, to submit the Horse to Sample collection, as it is the case in the present case.
- 9.8 As regards the sanctions to be imposed in case of an Article 2.3 EAD Rule violation, Article 10.3 of the EAD Rules foresees that the period of Ineligibility shall be two (2) years, unless Articles 10.4, 10.5 or 10.6 are applicable, which the Tribunal finds is not the case in the present case, and neither have the PR or Trainer argued in this direction.
- 9.9 The Tribunal notes – as also confirmed by the Trainer himself during the final hearing – that three Controlled Medication rule violations have been recorded against the Trainer since 2015. The FEI argues that the present violation was not the first violation of the Trainer, and that it should count as a second violation.

- 9.10 The Tribunal finds that Article 10.8.1 of the EAD Rules is not applicable in the present case, as this rule requires a "*second EAD Rule violation*", whereas the previous violations recorded against the Trainer, were Controlled Medication Rule violations. However, the Tribunal finds the fact that the Trainer has already been suspended for a Controlled Medication rule violation, as well as having been the registered Trainer for two other horses which tested positive for Controlled Medication substances, as an aggravating circumstance to be taken into account in the present case.

10. Disqualification

- 10.1 For the reasons set forth above, the FEI 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 Articles 10.3 and 9 of the EAD Rules.

11. Sanctions

- 11.1 Under the current EAD Rules, for first time offenders, the sanction for a violation of Article 2.3 of the EAD Rules is a two-year period of Ineligibility, unless the conditions for eliminating, reducing or increasing the sanctions are met. The Tribunal finds that based on the Case File, the PR and the Trainer are first offenders in the meaning of the EAD Rules, since neither of them had previously violated the EAD Rules. The Tribunal however finds that the Trainer's previous ECM Rule violation, and involvement as registered Trainer for several positive ECM cases has to be considered as an aggravating circumstance.
- 11.2 The FEI Tribunal imposes the following sanctions on the PR, and the Trainer, in accordance with Article 169 of the GRs and Articles 10.3 and 10.7 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 5 March 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 4 March 2020**.
 - 2) The Trainer shall be suspended for a period of **thirty (30) months**. The period of Provisional Suspension, effective from 5 March 2018 shall be credited against the period of

Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 4 September 2020**.

- 3) The PR is fined **three thousand Swiss Francs (CHF 3,000)**.
 - 4) The Trainer is fined **three thousand Swiss Francs (CHF 3,000)**.
 - 5) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500)** towards the legal costs of the judicial procedure.
 - 6) The Trainer shall contribute **one thousand five hundred Swiss Francs (CHF 1,500)** towards the legal costs of the judicial procedure.
- 11.3 No Person Responsible or member of the Support Personnel 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 EAD Rules).
- 11.4 Where a Person Responsible or member of the Support Personnel 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 10.11.3 of the EAD 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 EAD 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 persons sanctioned: Yes**
- b. The President of the NF of the persons 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 'Henrik Arle', is written over a light blue rectangular background.

Mr. Henrik Arle, one member panel