

**DECISION of the FEI TRIBUNAL
dated 18 December 2019**

Positive Banned Substance Case No.: 2018/BS07

Horse: H V CHAIRU

FEI Passport No: 104GZ11/UAE

Person Responsible/NF/ID: Jonatan RIVERA IRIARTE/URU/10043172

Trainer/NF/ID: Abdullah Hasan AL HAMMADI/UAE/10048637

Event/ID: CEI2* 120 – Abu Dhabi, Al Wathba (UAE)/2018_CI_0522_E_S_01_01

Date: 13 January 2018

Prohibited Substance: Diisopropylamine, Hydroxyxylazine

I. COMPOSITION OF PANEL

Mr. Chris Hodson 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 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. Jonatan Rivera Iriarte.

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. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

1. Factual Background

- 1.1 H V CHAIRU (the "**Horse**") participated at the CEI2* 120 in Abu Dhabi, Al Wathba, United Arab Emirates (UAE), on 13 January 2018 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Jonatan Rivera Iriarte, 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 13 January 2018. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, The Hong Kong Jockey Club, in Hong Kong (the "**Laboratory**") analysed the Horse's blood and urine sample number 5560129 (the "**A-sample**") and reported an adverse analytical finding of Diisopropylamine in the blood sample, and Hydroxyxylazine in the urine sample.
- 1.4 Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Hydroxyxylazine is a sedative used to induce sedation, analgesia and muscle relaxation and is classified as a Controlled Medication Substance under the FEI List. The positive finding for these substances in the A-sample gives rise to an EAD Rule violation under the EADCMRs (Article 10.8.6 of the EAD Rules).

2. The Further Proceedings

- 2.1 On 5 February 2018, the FEI Legal Department officially notified the PR, through the National Federation of Uruguay ("**URU-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**"). 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.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a

period of two (2) months, from the date of Notification, *i.e.*, 5 February 2018, until 4 April 2018. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 The PR was informed that he was entitled to request an analysis of the B-sample in the Notification Letter. The PR requested for the confirmatory analysis to be conducted.
- 3.2 On 14 May 2018, the FEI informed the PR that the B-sample analysis conducted in a different FEI accredited laboratory confirmed the positive findings of the A-sample analysis, *i.e.*, Diisopropylamine in the blood sample and Hydroxyxylazine in the urine sample.

4. Written submission by and on behalf of the PR

- 4.1 On 8 May 2018, the PR submitted his explanations for the positive findings.
- 4.2 He stated that he had been registered with the FEI as a rider for the past fifteen (15) years, without any previous offence of any FEI rules and regulations.
- 4.3 Furthermore, he confirmed that he was aware of FEI rules and regulations, including the EADCMRs. He always checked the necessary information from trainers and veterinarians prior to taking part in FEI events.
- 4.4 Moreover, he was not an employee of the Al Reef Stables, *i.e.*, the stables where the Horse was stabled, and was riding only on trainer/owner's request in national and FEI rides. He did his best to be informed about everything concerning the horse, asking about the Horse's training, veterinary records, as well as being in touch with the trainers and veterinarians to make sure that everything regarding the horse, his athletic condition, soundness and safety were optimal for the welfare of the horse and for her personal safety. He had therefore done all what was under his possibilities to make sure there was no irregular situations involving the horse or the team that works with the horse on a daily basis.
- 4.5 Finally, for this particular ride, he did not see any abnormal situation involving the Horse or any one of the persons of the crew, veterinarians or persons belonging to the Al Reef Stables team.

- 4.6 Together with his explanations, the PR also submitted a Veterinary Report for the Horse during the period from 27 September 2017 to 19 February 2018. The report contained clinical examinations and treatments provided to the Horse throughout this period. However, the Prohibited Substances in question in the case at hand were not reported to have been administered to the Horse.

5. Written Response by the FEI

- 5.1 On 20 November 2019, the FEI provided its Response in this case.

- 5.2 The FEI submitted that:

- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
- b) The elements of an Article 2.1 violation are straightforward. *"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"*. Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event (and as confirmed by the B-sample analysis) confirmed the presence of Diisopropylamine and Hydroxyxylazine and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of Diisopropylamine and Hydroxyxylazine in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.
- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be

impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Diisopropylamine and Hydroxyxylazine have entered the Horse's system. In this case the PR has not provided any plausible information on how the substance could have entered the Horse. The threshold requirement for proving how the substance entered the Horse's system has, therefore, not been fulfilled.

- e) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse.
- f) Since the PR has not established how the Prohibited Substances entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the PR.
- g) The FEI has carefully evaluated the PR's explanations of the case. This information has however not been supported by any evidence, such as statements from the trainer or veterinarians, nor any supporting witnesses, and can therefore not be evaluated. The veterinary record of the Horse does not include any information that could account for the prohibited substances in the sample. On the contrary, the FEI found it worrying that the PR chose to compete with a horse that had such a long history of lameness only months prior to the Event.
- h) The FEI respectfully requested that the Tribunal issue a decision:
 - (i) upholding the charge that the PR violated Article 2.1 of the EAD Rules;
 - (ii) disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;
 - (iii) imposing a period of Ineligibility of two (2) years on the PR, commencing from 5 February 2018 (the date upon which the Provisional Suspension was imposed);
 - (iv) fining the PR in the amount of 7 500 CHF; and
 - (v) ordering the PR to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.
 - (vi) ordering the PR to pay the cost of the B-sample.

6. Further proceedings

- 6.1 On 13 December 2019, upon receipt of this Case File, the Tribunal granted the PR a further and final deadline to supplement his written explanations. The Tribunal further advised the PR that he could request a hearing.
- 6.2 The PR, however, did not supplement his submission, nor request for a hearing to be held.

7. Jurisdiction

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

8. The Person Responsible

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

9. The Decision

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-sample and B-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Diisopropylamine in the blood sample and Hydroxyxylazine in the urine sample taken from the Horse at the Event. The PR did not challenge the accuracy of the test results and the positive findings. Diisopropylamine and Hydroxyxylazine are Prohibited Substances under the FEI Equine Prohibited Substances List and the presence of the Diisopropylamine in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules. The presence of Hydroxyxylazine in a Horse's body is prohibited during an Event without a valid Veterinary Form, which has not been requested in the case at hand.
- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.3 Pursuant to Article 10.8.6 of the EAD Rules, where a PR based on the same factual circumstances is found to have committed a violation involving both a Controlled Medication Substance under the ECM Rules and a Banned Substance under the EAD Rules – such as the PR in the case at

hand -, the PR shall be considered to have committed one EAD Rule violation and the sanction imposed shall be based on the Banned Substance that carries the most severe sanction.

- 9.4 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 9.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 9.6 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 9.7 To start with, the Tribunal has taken note of the PR's explanations with regard to the positive finding. The PR has not provided any explanation as to how the Diisopropylamine and Hydroxyxylazine entered the Horse's system. Neither does the Medical Report of the Horse in the lead up to the Event contain any information that the Horse was administered the substances in question.
- 9.8 As a result, the Tribunal holds that the PR has not established – on a balance of probability, as required under Article 3.1 of the EAD Rules – how the Diisopropylamine and Hydroxyxylazine have entered the Horse's system.
- 9.9 The Tribunal therefore finds that Articles 10.4 and 10.5 of the EAD Rules cannot be applied in the case at hand. Furthermore, the Tribunal notes that the PR does not claim the applicability of Article 10.6 of the EAD Rules.
- 9.10 From the foregoing, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
- 9.11 The Tribunal takes note that the PR has been provisionally suspended since 5 February 2018, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension; at least the Tribunal has not been provided with information otherwise.

- 9.12 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

10. Disqualification

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination 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 EAD Rules.

11. Sanctions

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 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 February 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 4 February 2020**.
 - 2) The PR is fined **seven thousand five hundred Swiss Francs** (CHF 7,500.-).
 - 3) The PR shall contribute **two thousand Swiss Francs** (CHF 2,000.-) towards the costs of these proceedings. In addition, the PR shall bear the costs of the B-sample analysis.
- 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 EAD 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

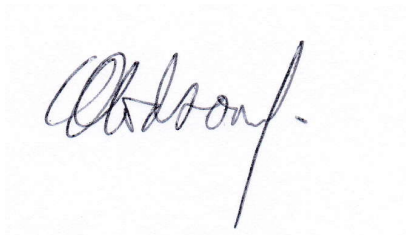
be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

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

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Chris Hodson", is centered on the page. The signature is written in a cursive, flowing style.

Mr. Chris Hodson QC, one member panel