



DECISION of the FEI TRIBUNAL

dated 24 April 2019

Positive Controlled Medication Case No.: 2018/CM01

Horse: CRAZY ANTAR **FEI Passport No:** 104UI67/UAE

Person Responsible/NF/ID: Ali Mohd Ali AL HOSANI/10082592/UAE

Event/ID: CEI1* 100 - Abu Dhabi, Al Wathba (UAE)/2017_CI_1827_E_S_01_01

Date: 9 December 2017

Prohibited Substances: Caffeine, Theophylline, Paraxanthine

I. COMPOSITION OF PANEL

Mr. Cesar Torrente (COL), one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR):

The 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: On 17 April 2019 – via telephone conference.

Present:

- The FEI Tribunal Panel
- Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

- Mr. Ali Mohd Ali Al Hosani, Person Responsible

- Mr. Hassan Rakan Al Mansoori, Owner and Trainer
- Ms. Muna Al Shamsi, counsel
- Mr. Adel Al Hosani, witness

For the FEI:

- Ms. Ana Kricej, Junior Legal Counsel
- Ms. Anna Thorstenson, 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 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

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

FEI Controlled Medication Regulations ("**ECM Rules**"), 2nd edition, effective 1 January 2016, and FEI Controlled Medication Regulations ("**2018 ECM Rules**"), 2nd edition, effective 1 January 2018.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Ali Mohd Ali Al Hosani. During the hearing the PR was represented by Ms. Muna Al Shamsi of Al Gharib Law Firm in Dubai, UAE.

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 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 and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered the Horse's system."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the hearing. 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 CRAZY ANTAR (the "**Horse**") participated at the CEI1* 100 in Abu Dhabi, Al Wathba, United Arab Emirates (UAE), on 9 December 2017 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Ali Mohd Ali Al Hosani 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 9 December 2017.

- 1.3 Analysis of the urine and blood sample number 5568560 taken from the Horse at the Event was performed at the FEI-approved Laboratory, the Racing Laboratory, Hong Kong Jockey Club (the "**Laboratory**") in Hong Kong. The analysis revealed the presence of Caffeine, Theophylline and Paraxanthine in both the urine and blood.
- 1.4 The Prohibited Substances detected are Caffeine, Theophylline and Paraxanthine. Caffeine and Paraxanthine are stimulants that simulate the central nervous system. Theophylline is a bronchodilator used in the treatment of respiratory disease. Caffeine and Theophylline can be metabolites of each other. Paraxanthine can be a metabolite of Caffeine. All three substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List (the "**FEI Prohibited List**"). However, Paraxanthine was classified as a Banned Substance at the time of the Event in 2017 but was reclassified as a Controlled Medication and Specified Substance shortly after the Event, from 1 January 2018, and prior to the Notification Letter to the PR. According to the FEI's Answer, the FEI decided to treat the present case as a Controlled Medication Rule Violation case in its entirety namely also with regards to the substance Paraxanthine. Furthermore, no valid Veterinary Form exists for the respective substances. Therefore, the positive finding for Caffeine, Theophylline and Paraxanthine in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs¹.

2. The Further Proceedings

- 2.1 On 11 January 2018, the FEI Legal Department officially notified the PR through the UAE National Federation ("**UAE-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 11 January 2018, the PR and the owner of the Horse ("**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

¹ The Tribunal notes that Paraxanthine was re-classified from a Banned Substance under the 2017 FEI Prohibited List, to a Controlled Medication Substance under the 2018 FEI Prohibited List. Whereas, since the sample was collected in 2017, the 2017 FEI Prohibited List is applicable in the case at hand, the Tribunal in applying the *lex mitior* principle (as outlined in Article 16.1.2 of the EAD Rules) finds that Paraxanthine shall be considered as a Controlled Medication Substance in the present case; thus the case being a Controlled Medication case, rather than a Banned Substance case, as also notified as such by the FEI.

analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

- 3.2 On 29 March 2018, the FEI informed the PR and the Owner of the results of the B-Sample analysis which confirmed the presence of Theophylline and Paraxanthine in the urine sample and Caffeine and Theophylline in the plasma sample.

4. Written submission by and on behalf of the PR

- 4.1 The PR did not provide any explanations in writing.
- 4.2 On 19 April 2018, the Owner, who is also the Trainer submitted as follows:

"With reference to the positive case of my horse Crazy Antar I would like to declare the following:

The procedure of management, feeding and supplement program in my stable is standard and apply to all my horses in the same way.

None of the supplements used nor the feed are declared to contain caffeine and the same product are widely used in the UAE without testing positive:

- Adult Science Energy (Horse feed manufactured by Reverdy)*
- Gaster (Gastric mucosa protector manufactured by Nobilevet)*
- Idra (Electrolytes powder manufactured by NobileVet)*
- Kineo (Vit. E solution manufactured by NobileVet)*
- BC Amino (Branched-chain amino acid manufactured by HPL).*

My staff is instructed to use the maximum care is possible in keeping a high standard of hygiene in the barn in order to avoid possible contaminations.

We do not use injectable drugs unless requested by the treating veterinarian, Crazy Antar did not receive any parenteral treatment before the subject race.

I was surprised of receiving a notification of a non-negative A sample and this is the reason why I nominated Dr. Bruno Neri (Ph.D Biochemistry and Analytical Chemistry) to attend the B sample procedure on my behalf. I was hoping to have a better idea on how the positivity of my horse could have happened.

Unfortunately the B sample was confirmed positive and I am not in the position to give a reason or clarification for it.

Dr. Neri reported to me that the threshold level of the substances detected is far by being able to alter the performance of a horse and that the same level could have been stated as within the range by some other laboratories in the world.

There was no intention or conscious action from my side to alter the result of the race and I am wondering if the positivity could be secondary to an accidental contamination.

I can state to the best of my knowledge that no prohibited substance was administered to Crazy Antar prior or during the race."

- 4.3 On 19 February 2019, the Owner and Trainer further submitted that he had orally authorized Mr. Adel Al Hosani to attend the sample collection procedure, who has also signed the FEI EADCMP Sampling Form. The Owner alleges that sampling was not conducted in accordance with the procedures to be followed, more specifically as follows:

"(...) There are mistakes and deficiency in the procedures followed by the vet, which has been concluded by comparing the receipt of the official sampling notice of Crazy Antar with another similar case in our office (the Owner's legal representative's office) which was bearing a seal and a barcode number. We have talked to Mr. Adel Al Hosani who has witnessed the sampling, who has asserted that he has not received the passport and that there was no barcode on the receipt of the official sampling notice. After we have reviewed the procedures followed by the FEI regarding the sampling process, we have found out that the sampling form consists of three parts, and the vet shall keep one part and the person responsible for the horse receives the second part, and the third part is usually sent to the chosen certified laboratory by the FEI. This is determined by a unique barcode not by the name of the responsible person or the horse's name pursuant to paper 4 of the documentations of How Testing under the law of Fei Workshop Clean Sport."

- 4.4 The Trainer argued that he has over fifteen (15) years of experience in endurance riding, and has never been accused of any violations of the EADCMRs. He was considered as one of the prominent coaches who took care of their horses and was keen to provide the right and legal information to the equestrians, horsemen and vets, as well as the people working with him in the stable. He was aware of the EADCMRs.

- 4.5 Finally, he denied any of the accusations attributed to him; “*and confutation and invalidity of all the procedures taken to take the sample*”. No results should be disqualified, and no sanctions and fines imposed. The FEI shall be compelled to pay all legal expenses incurred by him.

5. Written Response by the FEI

- 5.1 On 31 August 2018, the FEI provided its Response in the case at hand.
- 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 Caffeine, Theophylline and Paraxanthine, and together constituted “sufficient proof” of the violation of Article 2.1 of the ECM Rules. In any event, the PR nor the Owner did not dispute the presence of the Prohibited Substances in the Horse’s sample. Accordingly, the FEI discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.
 - b) Where a Controlled Medication Substance was found in a horse’s sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the 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, but who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. To do this, the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substances entered the Horse’s system; and (ii) that he bore No Fault or Negligence for that occurrence, *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 stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Caffeine, Theophylline and Paraxanthine entered the Horse's system. The PR has not provided any explanation how those substances entered the Horse's system. The Trainer on the other hand has provided a statement, in essence stating that he could not give a reason or clarification of the positive sample and questioned if the positive result could have occurred due to accidental contamination. The FEI therefore submitted that the PR has 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*"², it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It had to be noted in this context that, in the *Glenmorgan decision*³, 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, the Sole Arbitrator in the *Royal des Fontaines case*⁴ had endorsed the 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

² Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

³ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

⁴ CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI

"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 is a reasonable and justifiable stance. Furthermore, as the CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he competed with, and could not delegate this duty to another person. The PR, therefore, has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with the utmost caution to fulfil this duty.
- i) In the case at hand, the PR has not established how the Prohibited Substances entered the Horse's system nor has the PR provided any evidence. The PR has therefore not discharged his burden of proving how the Caffeine, Theophylline and Paraxanthine entered the Horse's system. Due to the PR's unawareness on how the Prohibited Substances entered the Horse's system, the FEI was of the opinion that it cannot apply No (Significant) Fault or Negligence according to Article 10.4 and Article 10.5 of the ECM Rules. Consequently, no elimination or reduction of the period of Ineligibility in this case was possible. The FEI therefore respectfully submits that the applicable period of Ineligibility should be six (6) months.

- j) The FEI also requested that the results of the PR and Horse combination obtained in the Competition 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.
- k) 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 fine the PR in the amount of 2,500 CHF, and order the PR to pay the legal costs of 1,500 CHF.

5.3 On 25 March 2019, the FEI further responded to the Trainer's allegations with regard to flaws in the sampling procedures. More specifically, the FEI argued as follows:

"With regards to the alleged departure of procedure, the FEI highlights Art. 3 of the Equine Controlled Medication Rules (ECMR) in combination with Art. 7 of the same rules.

The FEI has in accordance with Art. 7.1.2 of the ECMR conducted its review which did not show any apparent departure from the FEI Testing procedures of the FEI Veterinary Regulations, the FEI Standard for Laboratories or another FEI standard, FEI Rule or Regulation, FEI Manual or policy that would cause the Adverse Analytical Finding. In accordance with Art. 3 of the ECMR there is a presumption that the Sample analysis has been conducted in accordance with the relevant rules. The Person Responsible and/or member of the Support Personnel can rebut this presumption by establishing by a balance of probability that a departure occurred which could reasonably have caused the Adverse Analytical Finding.

You have stated in your submission that the detached section of the FEI Sampling Form that was given to the Person Responsible did not contain a sticker with the unique barcode. The FEI is of the opinion that even if the PR would have received their section, as stated by you, without the bar code, such minor departure would not have caused the Adverse Analytical Finding namely the positive finding of Caffeine, Theophylline,

Paraxanthine. You have as well not provided any evidence showing the contrary. In addition, the FEI EADCMP Sampling Form which was enclosed to the Notification Letter of 11 January 2018, displays the unique bar code, and that form is clearly connected to the detached section of the form which was given to the PR. That is visible by the correction of the number 4 in the passport no. section that is repeated in the submitted detached section in your submission. You have not provided any evidence showing any other type of departure from sample procedure so the presumption of correctness is maintained.

We thank you for the additional information on the experience of Mr. Rakan, however please note, as already discussed, the charge of the Equine Controlled Medication Rule violation has been brought against the Person Responsible that is Mr. Ali Mohd Ali Al Hosani. I believe that some confusion with regards to that still exists.

As a conclusion, after thorough review of your additional submission, the FEI maintains its arguments and proposed sanctions as per the FEI Response of 31 August 2018. (...)"

6. Further proceedings

- 6.1 On 23 March 2019, - upon receipt of the Case File in the instant case - the FEI Tribunal Chair nominated a panel to which none of the Parties objected. The Tribunal further requested the PR to inform it whether he maintained his request for a hearing via telephone conference call, and proposed such hearing date.
- 6.2 On 2 April 2019, the legal representatives of the Owner confirmed that a hearing was requested, and on 8 April 2019 requested to postpone the hearing which was scheduled for the following day, due to the PR's unavailability.
- 6.3 On 8 April 2019, the Tribunal suggested a new hearing date and rejected the PR's request to hold the hearing in French, as in accordance with Article 20 of the IRs, proceedings shall normally be conducted in English, unless the Parties agree for it to be in French. No such agreement between the Parties has been received by the Tribunal.
- 6.4 On 16 April 2019, the Tribunal confirmed the new hearing date. Furthermore, the Tribunal informed that it took note that the PR was suspended for a violation of rules concerning horse abuse until 6

September 2019⁵, and that therefore any potential period of Ineligibility imposed by the Tribunal resulting from the matter at hand would only be starting as of 7 September 2019. The Tribunal granted both Parties with the opportunity to comment on this point. During the hearing the FEI argued that the FEI agreed that any potential period of Ineligibility shall start only as of 7 September 2019. The PR chose not to comment on this point.

7. Hearing

- 7.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The 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.

Further submissions by or on behalf of the PR:

- 7.2 The PR stated that he knew the Owner/Trainer for ten (10) years, and he had never tried to dope any horses. They had tried to find out where the substances came from but did not succeed. Both, the PR and the Trainer/Owner confirmed that they did not test any hay or feed fed to the Horse prior to the Event or thereafter.
- 7.3 The Owner/Trainer stated that the Horse was stabled at the Hassan Rakan Al Mansoori Endurance stables, and that he/his horses had been competing for twenty (20) years, during which time he never doped a horse, no anti-doping rule violation was recorded from his stables, and that he had not even received a Yellow Warning Card. He spent his own money on his horses, and he looked after his horses. In any case, if he were to dope a horse, he would do so at a 4* level and not at the lower level, such as the Event.
- 7.4 Further, since he was with the Horse, *i.e.*, looking after the Horse, twenty-four (24) hours, and since he did not administer the Prohibited Substances, and neither did his staff as they had told him, he was convinced that the positive finding did not concern the Horse's blood. He argued that even in hospitals blood samples could be mixed-up. In the case at hand the PR received the sampling paper without a bar code. He

⁵ Decision of the FEI Tribunal - Alleged Horse Abuse of the horse LCE CORLEONE dated 7 March 2019.

suggested that the FEI contacted the organizer of the Event, the Emirates Endurance village, and requested video footage from the blood testing.

Further submissions by the FEI:

- 7.5 The FEI further argued that the FEI has reviewed the sampling procedure and has not identified any departures that caused the Adverse Analytical Finding, as required by the EADCMRs. Moreover, the FEI argued that nothing was wrong with the Sampling. The Sampling form was made in several copies and the detached section handed to the PR. This was however not the only evidence of the sample and the connection to the Horse. The FEI had also received a report from the testing veterinarian with the bar code. In addition, each time a horse is sampled, a sticker was immediately put on the bottles and on the form. The FEI further noted that the PR's representative, present at the Sampling, had made no remarks on the FEI EADCMP Sampling Form therefore confirming that nothing went wrong with the procedure. Ultimately, the burden of proof of any potential departure was on the PR, and such departure had to be proven to actually have caused the positive finding.
- 7.6 The FEI acknowledges that the Prohibited Substances which are also classified as Specified Substances could be found in contaminated hay or feed. However, the PR did not provide any explanations on the source of the Prohibited Substances, nor tested any hay and feed. The burden of proof to show how the Prohibited Substances entered the Horse's system was on the PR.

8. Jurisdiction

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

9. The Person Responsible

- 9.1 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. In this respect, the Tribunal wishes to clarify that Support Personnel, such as the trainer in the case at hand, might be held additionally responsible; the rider however remains the main Person Responsible. The decision in the present case only deals with the rule violation by the rider.

10. The Decision

- 10.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established where there is no valid Veterinary Form and where the Horse's B-Sample is analysed and the analysis of the Horse's B-Sample confirms the presence of the Controlled Medication Substance found in the Horse's A-Sample during the Event. 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 Caffeine, Theophylline and Paraxanthine in the sample taken from the Horse at the Event. The PR nor the Owner/Trainer did not contest in a valid way the accuracy of the test results or the positive findings. The presence of Caffeine, Theophylline and Paraxanthine during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 10.2 The PR did however claim that it was possible in the case at hand that the AAF was directly caused by a violation of an FEI Regulation, *i.e.*, the blood Sample not being the one of the Horse, and this Sampling document not containing a sticker with the bar code.
- 10.3 Following Article 3.2.3 of the ECM Rules, a PR who is alleged to have committed an ECM Rule violation may rebut this presumption by establishing "*by a balance of probability, that a departure from another FEI standard, FEI Rule or Regulation, FEI Manual or policy could reasonably have caused the ECM Rule violation based on the Adverse Analytical Finding or other ECM Rule violation (...)*".
- 10.4 The PR has therefore to establish by a balance of probability that a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy occurred. In a second step, where such departure has been established, the PR has to establish by a balance of probability that such departure could reasonably have caused the AAF.
- 10.5 The Tribunal however finds that the PR has not established by a balance of probability a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy. The Tribunal has taken note of the PR's explanations with regard to not receiving a document containing the sticker with the bar code, and that the blood sample could not have been the Horse's. However, the PR has not provided any evidence with regard to the blood sample. The possibility that the wrong sticker with the bar code could be put on the wrong FEI EADCMP Sampling Form is nothing more than mere speculation with no evidence to support it. Regarding the stickers with the bar code, the Tribunal notes that the FEI EADCMP Sampling Form does contain the stickers with the bar code. Furthermore, the Tribunal takes note and

accepts the FEI's explanations in this regard. Finally, the Tribunal also notes that the Prohibited Substances were not only detected in the Horse's blood but also in the Horse's urine. The PR however did not claim that the urine samples were not the ones of the Horse. In any case, even if the claim extends also the urine sample taken, the Tribunal finds that the PR has not established that a departure occurred.

- 10.6 In addition, even if the Panel would find – which is not the case in the case at hand – that there was a departure from an FEI standard, FEI Rule or Regulation, FEI Manual or policy, the burden would then still lay with the PR to establish that such departure could reasonably have caused the AAF.
- 10.7 As a result the Tribunal finds that, based on the competent evidence before it, an ECM Rule violation, *i.e.*, the presence of three (3) Controlled Medication Substances in the Horse's system, has been established.
- 10.8 As argued by the FEI, 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. The Tribunal considers therefore that once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 10.9 However, to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system.
- 10.10 The Tribunal takes note that neither the PR nor the Owner/Trainer of the Horse could provide any explanations for the positive finding, nor have they for example tested the hay and feed in order to assure it was not contaminated. Therefore, the Tribunal holds that the PR has not established - on a balance of probability, as required under Article 3.1 of the ECM Rules – how the Prohibited Substances entered the Horse's system.
- 10.11 In the absence of establishing on the balance of the probability how the Prohibited Substances entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.
- 10.12 Even if the source of the Prohibited Substances was established, the Tribunal would still conclude that No (Significant) Fault or Negligence does not apply in this case because 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.

10.13 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.

11. Disqualification

11.1 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.

12. Sanctions

12.1 As a result of the foregoing, and pursuant to Article 10.2 of the ECM Rules, the period of Ineligibility imposed on the PR shall be six (6) months.

12.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

1) The PR shall be suspended for a period of **six (6) months**, starting from 7 September 2019. Therefore, the PR will be ineligible **until 6 March 2020**.

2) The PR is fined **two thousand five hundred Swiss Francs (CHF 2,500)**.

3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500)** towards the costs of this procedure.

12.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).

- 12.4 Where a Person Responsible who has been declared Ineligible violates the rule 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).
- 12.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.6 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



Mr. Cesar Torrente, one member panel