



**DECISION of the FEI TRIBUNAL
dated 10 July 2019**

Positive Controlled Medication Case No.: 2018/FT24

Horse: ESUS DE MARAVAL

FEI Passport No: 104TD86/OMA

Person Responsible/NF/ID: Abdul Hamid Al Murad Al Balushi/OMA/10095578

Event/ID: CEI3* 160 – Muscat (OMA)/2018_CI_1761_E_S_01

Date: 12 April 2018

Prohibited Substance: Dexamethasone

I. COMPOSITION OF PANEL

Ms. Harveen Thauli (CAN), 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 Controlled Medication Regulations ("**ECM 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. Abdul Hamid Ali Murad Al Balushi.

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."

ECM Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.5 shall be six months, subject to potential reduction

or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation.”

ECM Rules Art. 9: “For cases other than those prosecuted under the Administrative Procedure, a violation of these ECM Rules in connection with a Test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition with all resulting consequences, including forfeiture of any related medals, points and prizes. Where applicable, consequences to teams are detailed in Article 11.

Even if a sanction is reduced or eliminated under Article 10 below, such reduction or eliminated shall under no circumstances eliminate the automatic Disqualification of Individual Results mandated by this Article 9.”

ECM Rules Art. 10.1.2: “At Events other than those listed above: an ECM Rule violation occurring during or in connection with an Event may lead to Disqualification of 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, except as provided in Article 10.1.4.”

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 ESUS DE MARVAL (the “**Horse**”) participated at the CEI3* 160 in Muscat, Oman, on 12 April 2018 (the “**Event**”), in the discipline of Endurance. The Horse was ridden by Mr. Abdul Hamid Ali Murad Al Balushi, 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 April 2018. The sample was divided into an A-sample and B-sample.

- 1.3 The FEI-approved Laboratory, LGC Laboratory on Newmarket Road, Fordham, Cambridgeshire, UK (the "**Laboratory**") analysed the Horse's blood sample number 5552462 (the "**A-sample**") and reported an adverse analytical finding of Dexamethasone.
- 1.4 Dexamethasone is a corticosteroid with anti-inflammatory effect. Dexamethasone is a "Prohibited Substance" and classified as Controlled Medication Substance under the FEI Equine Prohibited Substances List. Furthermore, no valid Veterinary Form exists for this Prohibited Substance. Therefore, the positive finding for Dexamethasone in the A-sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 25 May 2018, the FEI Legal Department officially notified the PR, through the Oman National Federation ("**OMA-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**").
- 2.2 The FEI Legal Department initiated proceedings under a simplified Administrative Procedure (also known as "Fast Track"), and offered the PR the opportunity to accept the following administrative sanctions: (i) disqualification of himself and the Horse from the Event, including the forfeiture of all prizes and prize money won at the Event; (ii) a fine of one thousand five hundred Swiss Francs (CHF 1,500); and (iii) costs of one thousand Swiss Francs (CHF 1,000). The PR was also informed that if he did not accept the administrative sanctions by 8 June 2018, his case would be submitted to the Tribunal.

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.

4. Written submission by and on behalf of the PR

- 4.1 The PR did not respond at all to the Notification Letter despite several reminders from the FEI.

5. Written Response by the FEI

- 5.1 On 26 March 2019, the FEI provided its Response in this case.
- 5.2 The FEI submitted that:

- a) Article 3.1 of the ECM Rules makes it the FEI's burden to establish all of the elements of the ECM 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 ECM Rule violation under Article 2.1"*. Instead it is 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 Dexamethasone and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules.
- c) Where a Prohibited Substance is found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arises under the ECM 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 ECM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six (6) months, unless he is able to rebut the presumption of fault. If the PR fails to do so, the six (6) month period of Ineligibility applies.
- d) The PR did not respond at all to the Notification Letter nor did he respond to a further and final deadline that the Tribunal granted to him (discussed below). Since the PR failed to provide any explanation for the positive finding of the Prohibited Substance in his Horse, the Tribunal does not believe it is necessary to set out, in this particular decision, how the presumption of fault is rebutted.
- e) The FEI respectfully requested that the Tribunal issue a decision:
 - (i) upholding the charge that the PR violated Article 2.1 of the ECM 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 ECM Rules;
 - (iii) imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the final decision;
 - (iv) fining the PR in the amount of 3 000 CHF; and
 - (v) ordering the PR to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings.

6. Further proceedings

- 6.1 On 29 June 2019, upon receipt of this Case File, the Tribunal granted the PR a further and final deadline to provide his written explanations to the alleged rule violation by 2 July 2019. The Tribunal further advised the PR that he could request a hearing.
- 6.2 The PR did not respond at all to the Tribunal.

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 The Tribunal is satisfied that the Laboratory analysed the A-sample properly and that the findings are accurate. The Tribunal accepts that the test results evidence the presence of the Prohibited Substance, Dexamethasone in the A-sample. As stated, the PR did not provide any explanation for the positive finding of the Prohibited Substance. As a result, the Tribunal finds that the FEI has discharged its burden to establish the objective elements of the violation under Article 3.1 of the ECM Rules.
- 9.2 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.

10. Disqualification

- 10.1 For the reasons set out above, the Tribunal disqualifies the results of the PR and Horse combination obtained in the Event, and orders the forfeiture of all medals, points and prize money won at the Event, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

11. Sanctions

- 11.1 Pursuant to Article 10.2 of the ECM Rules, the period of Ineligibility imposed on the PR is 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 is suspended for a period of **six (6) months** from the date of notification of this Decision. Therefore, the PR will be ineligible **until 9 January 2020**.
 - 2) The PR is fined **three thousand Swiss Francs (CHF 3,000)**.
 - 3) The PR is ordered to contribute **three thousand Swiss Francs (CHF 3,000)** towards the costs of this procedure.
The Tribunal orders the above costs because this matter could have been resolved efficiently and effectively under the Administrative Procedure. Since the PR failed to respond to the FEI at the outset, the FEI Legal Department incurred additional costs and time to follow-up with the PR and prepare submissions to the Tribunal.
- 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 authorised or organised 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 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 will 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 this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt of this decision.

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



Ms. Harveen Thauli, one member panel