

DECISION of the FEI TRIBUNAL
dated 19 February 2020

Banned Substance Case No.: 2019/BS12

Horse: DONAUGRAAF **FEI Passport No:** 104OR49/MEX

Person Responsible/NF/ID: Francisco LOMELIN/MEX/10032251

Event/ID: CSI4*-W – Leon (MEX)/2019_CI_0290_S_S_01

Date: 6 – 10 February 2019

Prohibited Substance(s): Synephrine

I. COMPOSITION OF PANEL

Mr. Mohammed Al Saberi, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, 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, changes effective 1 January 2019.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Francisco Lomelin.

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."

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. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. The Parties

- 1.1 The Person Responsible ("**PR**"), Mr. Francisco Lomelin, is a jumping rider for Mexico.
- 1.2 The Fédération Equestre Internationale (the "**FEI**" and together with the PR, the "**Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Factual Background

- 2.1 The PR competed with the horse DONAUGRAAF (the "**Horse**") at the CSI4*-W in Leon, Mexico, from 6 to 10 February 2019 (the "**Event**").
- 2.2 During the Event in-competition samples (urine and blood) were collected from the Horse. Subsequent analysis of the sample revealed the presence of Synephrine in the urine sample.
- 2.3 On 18 March 2019, the FEI notified the PR of an adverse analytical finding and alleged a violation of Article 2.1 of the EAD Rules. Together with the Notification Letter the PR was informed that the Horse was provisionally suspended for 2 months, until 17 May 2019, and provided with the opportunity (together with the Owner of the Horse) to request for a Preliminary Hearing.

3. Further proceedings

- 3.1 On 12 April 2019, following a Preliminary Hearing, the Preliminary Hearing Panel issued a Preliminary Decision. The Preliminary Hearing Panel found that none of the requirements for the lifting of the Provisional Suspension of the Horse pursuant to Article 7.4.4 of the EAD Rules were met at the time, and decided to maintain the Provisional Suspension of the Horse until 17 May 2019, midnight Swiss time.
- 3.2 On 30 January 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2019/BS12 DONAUGRAAF and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.
- 3.3 On 7 February 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Neither party objected to the constitution of the panel.

4. Agreement between Parties

- 4.1 On 30 January 2020 the Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

1. In the matter of the Adverse Analytical Finding related to the samples, which were collected from Mr Francisco Lomelin's horse DONAUGRAAF

(the "Horse") at the CSI4*-W - Leon Mexico, from 6 to 10 February 2019 (the "Event"), Mr Francisco Lomelin (the "PR") and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

- (a) Mr Lomelin admits the violation of Article 2.1 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*); and
 - (b) Mr Lomelin established on a balance of probabilities how the Synephrine entered the Horse's system; and
 - (c) Mr Lomelin bears no fault or negligence for the Rule Violation and therefore he shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated; and
 - (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules.
 - (e) In accordance with EAD Rules Articles 9.1 and 10.1.2 the results achieved by the Mr Lomelin and DONAUGRAAF at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
 - (f) Mr Lomelin shall not incur any fines;
 - (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules) will apply in this case.
2. Mr Lomelin acknowledge that the Provisional Suspension imposed on the Horse and therefore accepts that this remained in place until 17 May 2019.
 3. Each party will bear its own legal and other costs incurred in connection with these proceedings.
 4. This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.
 5. The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final

settlement of all claims relating to the subject-matter of these proceedings.

End Quote

4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

1. "Mr Francisco Lomelin, the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a jumping rider for Mexico.
2. The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).
3. The PR participated with the horse DONAUGRAAF (the "Horse") at the CSI4*-W - Leon Mexico, from 6 to 10 February 2019 (the "Event"). As a member of the Mexican Equestrian Federation (the "MEX NF"), the latter being a member of the FEI, the PR was bound by the EADCM Regulations.
4. The Horse was selected for testing on 10 February 2019. Blood and urine samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.
5. Analysis of the urine sample revealed the presence of Synephrine, a stimulant that causes vasoconstriction, increases heart rate and is used as a weight loss aid in humans. Synephrine is a Banned Substance under the 2019 FEI Equine Prohibited Substances List. Synephrine remaining a Banned Substance is also designated as a "Specified Substance".
6. By notification letter dated 18 March 2019, the FEI informed Mr Lomelin, in his capacity as the Person Responsible, and the MEX NF of a violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Anti-Doping Rules (the "EADRs") based on the Laboratory's adverse analytical finding of Synephrine in the Horse's Sample collected at the Event. On the same day, a Provisional Suspension of two months was imposed on the Horse. (Exhibit 1) The PR was not provisionally suspended since the Prohibited Substance in question is designated as a Specified Substance.

7. In the notification letter of 18 March 2019, the PR was informed of his right to request the Horse's B Sample to be analysed. The PR did not request for the B-Sample Analysis.
8. On 25 March 2019, the PR provided his initial written submission. (Exhibit 3a-b)
9. A preliminary hearing was held on 11 April 2019, and the FEI Tribunal rendered a preliminary decision on 12 April 2019, which maintained the provisional suspension of the Horse. (Exhibit 4)
10. After significant effort in investigating the positive finding the PR concluded that the initial explanations were not the reason for the positive finding. Instead the PR and the MEX NF discovered that the substance in question, Synephrine most likely entered the Horse's system through teff hay.
11. In addition, the MEX NF was notified by the FEI of about 10 other positive findings resulting from this teff hay produced in Mexico¹.
12. The PR provided statements from the producer of the teff grass, which confirms that samples were sent for analysis and the fact the teff grass naturally can contain Synephrine. (Exhibit 5)
13. The PR also provided receipts from the purchase of the teff grass from the producer in question. (Exhibit 6)
14. The PR and the MEX NF provided the Laboratory Report from UC Davis of the tested feed from the producer, which confirms that "*Two samples of Teff Grass labeled as Quintana and Rancho La Napolera were submitted by Roberto Quintana*". (Exhibit 7)
15. The teff hay which is now known to be able to contain Synephrine as also acknowledged in the FEI Warning regarding Synephrine issued by the FEI and distributed via email in the FEI Veterinarian Update on 13 May 2019. (Exhibit 8)
16. The PR is an experienced rider who has owned and trained about 50 horses. As owner and rider, he has managed and trained all of his horses as well as his team, seeking excellence in every aspect of the sport. During his international career, he has been submitted to Anti-Doping tests approximately 6 to 8 times, chosen by a random process, without ever testing positive with any of his horses.

¹ <https://inside.fei.org/system/files/Case%20Status%20Table%20Horses%20-%202004%2009%2019.pdf>
Cases 2019/BS13, BS14, BS15, BS19, BS20, BS21, BS22, BS23, BS26, BS27.

17.The PR's main objective to offer a place with top quality facilities, services and rider/horse care and hygiene regulations to ensure the wellbeing of all horses and riders alike and he is very meticulous with my horses' programs to ensure their welfare.

18.The PR has the following actions and procedures in place (Exhibit 9):

- Every horse has its own tailor-made program, according to their very specific characteristics, hence, every horse has its own record in a rigorous logbook, describing their specific workouts and daily performance, vet reports and medical records, dietary specifications and showing history.
- Each horse has its own personal tack equipment and stable supplies, reinforced with instruction labels for each horse to ensure their best personal attention.
- Horses are looked after the finest specialists, working with a group of veterinarians, acupuncturists, a physiotherapist led by Diego Ulivarri, FEI certified veterinarian.
- On a daily basis, a team that looks after the horses, focusing on their development, care and health, highly committed and talented individuals, passionate about their jobs and the horses' best evolution.
- Beyond basic daily duties, each member of the team looks after specific aspects of the stable and horses, being under continuous formation in diverse subjects. Some examples are, show logistics and horse development, networking and supervision of medical ends, a stable manager, research and formation on FEI rules, cleansport and campus to keep the team updated, among others.
- The horses undergo periodic veterinary visits to ensure they are at their best; we go after the motto of prevention instead of cure. The horses do not start any medical treatment, of any kind, whether it's medication or physical treatment such as eg. ice, if it is not suggested by a specialist, and approved the lead veterinarian.

19.The PR provided a statement from his treating veterinarian confirming that he is the treating veterinarian for the Horse and that he has never administered any product containing Synephrine or any similar substance to the Horse; (Exhibit 3b)

20. The PR has had no reason to suspect that the hay could contain any Prohibited Substances especially since Synephrine risk has come to the common awareness only after this case.
21. The PR therefore bears no fault or negligence for the EAD rule violation.
22. After the notification of this case the FEI established 10 other positive cases involving the Prohibited Substance of Synephrine originating from the same feed producer in Mexico.
23. The feed from the producer was tested upon request of the FEI, and hay samples were sent to UC Davis Laboratory, where the presence of Synephrine was confirmed, as provided by the PR above. (Exhibit 7)
24. The FEI is therefore satisfied that the PR established:
- (a) on a balance of probabilities, a plausible explanation of how the Synephrine entered the Horse's system, which was via the teff grass from the producer in Mexico;
 - (b) that the PR did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that the hay contained a Banned Substance;
 - (c) in consequence the FEI is satisfied that the PR established that he bore no Fault or Negligence for the Rule Violation.
25. Article 7.6.1 of the EAD Rules permits an agreement between the parties, subject to FEI Tribunal approval."

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 5.2 As a member of the Mexican National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the

Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts – on a balance of probability - that the source of the Synephrine was via the teff grass from the producer in Mexico.

- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 6.3 Following from Article 10.4 of the EAD Rules, where a PR establishes that he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be eliminated.
- 6.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous case law.
- 6.5 Moreover, the Tribunal notes that the Horse most likely competed with Synephrine in its system throughout the entire Event. Therefore, the playing field was unlevel. The Tribunal acknowledges and agrees with the Parties that all results of the PR and Horse combination achieved during the Event shall be disqualified.
- 6.6 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS12 DONAUGRAAF.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Francisco Lomelin, concerning the case 2019/BS12 DONAUGRAAF is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL

A handwritten signature in blue ink, consisting of a large loop followed by several horizontal strokes, positioned above a solid black horizontal line.

Mr. Mohammed Al Saberi, one member panel