

**DECISION of the FEI TRIBUNAL
dated 23 January 2020**

Controlled Medication Substance Case No.: 2019/CM03

Horse: MYRIMBAH ANTIONETTE

FEI Passport No: 105TG82/UAE

Person Responsible/NF/ID: Asghar Ali MUHAMMAD FAIZ/UAE/10113525

Trainer/NF/ID: Omair Husain Abdulla AL BLOUSHI/UAE/10028104

Event/ID: CEI1* 80 – Bou Thib (UAE)/2018_CI_1890_E_S_01

Date: 14 December 2018

Prohibited Substance: Flunixin

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez (MEX), 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 24th edition, effective 20 November 2018 ("**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, changes effective 1 January 2018.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes 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.

FEI Guidelines for Fines and Contributions towards Legal Costs ("**FEI Guidelines**"), effective as of 1 January 2018.

1. Person Responsible: Mr. Asghar Ali MUHAMMAD FAIZ.

2. 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's* 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 2.6 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."

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 MYRIMBAH ANTIONETTE (the "**Horse**") participated at the CEI1* 80 in Bou Thib (UAE), on 14 December 2018 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Asghar Ali MUHAMMAD FAIZ, 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 14 December 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 urine and blood sample number 5575246 (the "**A-sample**") and reported an adverse analytical finding of Flunixin in the urine sample.
- 1.4 Flunixin is an anti-inflammatory drug with analgesic effects. The substance is classified as Controlled Medication Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding for Flunixin without a valid Veterinary From gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 14 January 2019, the FEI Legal Department officially notified the PR, through his National Federation, the United Arab Emirates National Federation ("**UAE-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**").
- 2.2 The Notification Letter further states that since the PR has a prior Controlled Medication Rule violation in February 2018 (Case 2018/CM04 AL WAFYAH) he is no longer eligible for the Administrative Procedure.

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 did not request for the confirmatory analysis to be conducted. Neither did the PR challenge the analysis results of the A-sample.

4. Written submission by and on behalf of the PR

- 4.1 Until the date of this Decision, and having been invited to do so by the FEI and the FEI Tribunal, the PR did not provide any explanations with regard to the positive finding.

5. Written Response by the FEI

- 5.1 On 10 December 2019, the FEI provided its Response in this case.
- 5.2 In essence, 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 Flunixin and 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 this substance 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 ECM Rules.
 - c) Where a Controlled Medication Substance is found in a horse's sample, 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) months period of Ineligibility applies.

- d) The ECM 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 substances 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 Controlled Medication Substance in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Flunixin has 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) Since the PR has not established how the Controlled Medication Substance entered the body of the Horse, there could be no reduction of the standard sanction for Controlled Medication Substances, namely six (6) months period of Ineligibility.
- f) However, the FEI needed to furthermore apply Article 10.8 of the ECM Rules (Multiple Violations) since the present case was the PR's second ECM Rule violation. The aforementioned article requires for the period of Ineligibility for a Person's Responsible second ECM Rule violation within the previous four (4) years to be greater of (a) three (3) months; (b) one-half of the period of Ineligibility imposed for the first ECM or EAD Rule violation without taking into account any reduction under Article 10.6 of the ECM Rules; or (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were the first violation, without taking into account any reduction under Article 10.6 of the ECM Rules. The greatest of the above stated options was therefore one (1) year. The FEI therefore submitted that the applicable period of Ineligibility imposed on the PR in the present case should be one (1) year.
- g) 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 one (1) year on the PR, commencing from the date of the final decision;
 - (iv) fining the PR in the amount of 3 500 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 7 January 2020, the Case File in the present case was received by the FEI Tribunal.
- 6.2 On 10 January 2020, the FEI Tribunal Chair nominated a one member panel for the case at hand. Further, the Tribunal provided the PR with another opportunity to submit his explanations for the positive finding, as well as the possibility to request for a hearing in the present case.
- 6.3 The PR did however not provide any explanations or request for a hearing to be held.

7. Jurisdiction

- 7.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ECM Rules, as well as Article 18 of the IRs.

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 ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Flunixin 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 finding. This substance is considered a Controlled Medication Substance under the FEI List and the presence of Flunixin in a Horse's body during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 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 ECM Rules.

- 9.3 Pursuant to Article 10.2.1 of the ECM Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Controlled Medication Substance in a Horse's sample, as in the case at hand, shall be six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the ECM Rules.
- 9.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM 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 ECM Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the ECM Rules.
- 9.5 In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Furthermore, the Tribunal notes that the PR does not claim the applicability of Article 10.6 of the ECM Rules.
- 9.6 The Tribunal takes note that the PR has not provided any explanations for the positive finding. As a result, the Tribunal finds 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.
- 9.7 In the absence of establishing on the balance of the probability how the Prohibited Substance entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.
- 9.8 Even if the source of the Prohibited Substance 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.
- 9.9 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.
- 9.10 In addition, the Tribunal takes note that the present rule violation is the PR's second ECM rule violation within the previous four (4) years. It follows from Article 10.8 of the ECM Rules that for a PR's second ECM Rule violation (within the previous 4 years) – such as in the case at

hand-, the period of Ineligibility shall be the greater of (a) three (3) months; (b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under Article 10.6 of the ECM Rules; or (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were the first violation, without taking into account any reduction under Article 10.6 of the ECM Rules.

- 9.11 Therefore, the period of Ineligibility to be imposed on the PR is one (1) year.
- 9.12 Pursuant to Article 10.2 of the ECM Rules and in following the FEI Guidelines, as well as in taking into consideration all circumstances of the case at hand, the Tribunal finds a fine in the amount of 3,500 CHF and costs in the amount of 1,500 CHF as appropriate for the present case.
- 9.13 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 ECM 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 ECM 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 one (1) year.
- 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 shall be suspended for a period of **one (1) year**, starting from the date of this Decision. Therefore, the PR will be ineligible through **22 January 2021**.
 - 2) The PR is fined **three thousand five hundred Swiss Francs (CHF 3,500.-)**.
 - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500.-)** towards the costs of these proceedings.
- 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 ECM 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 10.11.2 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 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. José A. Rodríguez Alvarez, one member panel