

## DECISION of the FEI TRIBUNAL

dated 23 May 2012

**Positive Controlled Medication Case No.:** 2012/CM01

**Horse:** VANHOEVE

**FEI Passport No:** 102WC08

**Person Responsible:** Khaled Abdulaziz Al Eid

**Event:** CSI3\*-W, Riyadh (KSA); 30 November – 03 December 2011

**Prohibited Substances:** Phenylbutazone, Oxyphenbutazone

### 1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair  
Mr. Pierre Ketterer, member  
Mr. Randi Haukebø, member

### 2. SUMMARY OF THE FACTS

#### 2.1 Memorandum of case: By Legal Department.

**2.2 Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and at the hearing, as also made available by and to the PR.

**2.3 Oral hearing:** On 18 April 2012 – FEI Headquarters Lausanne

**Present:** The FEI Tribunal Panel  
Ms. Erika O'Leary, FEI Tribunal Clerk

**For the PR:** Mr. Khaled Abdulaziz Al Eid, PR  
Mr. Jeremy Dickerson, Counsel for the PR  
Mr. James Pheasant, Counsel for the PR  
Ms. Georgina Shaw, Counsel for the PR  
Mr. Ziyad Abduljawad, Managing Director Saudi Equestrian  
Mr. Rogier Van Iersel, Team Manager  
Mr. Sami Al Duhami, Team Director  
Dr. Philippe Benoit, Team Veterinarian

**For the FEI:** Ms. Lisa Lazarus, General Counsel  
Ms. Carolin Fischer, Legal Counsel

In order to streamline the proceedings, it was agreed at the request of Counsel for the PR to allow Mr. Abdullah Waleed Sharbatly, Person Responsible in Case 2012/CM03, LOBSTER and also a member of Saudi Equestrian, whose hearing was scheduled for the following day, together with Mr. Stanny Van Paesschen, team trainer for Saudi Equestrian and an intended witness for Mr. Sharbatly, to be present during the hearing.

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 23<sup>rd</sup> edition, effective 15 November 2011 ("**Statutes**"), Arts. 1.4, 36 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2<sup>nd</sup> edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5 April 2010, updates effective 1 January 2011, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

#### **3.2 Person Responsible:** Khaled Abdulaziz Al Eid

#### **3.3 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)."

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. *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 – 2.7 ECM Rules below where the circumstances so warrant. 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.”.

## **4. DECISION**

### **4.1 Factual Background**

1. VANHOEVE (the “Horse”) participated at the CSI3\*-W in Riyadh (KSA) from 30 November to 3 December 2011 (the “Event”), in the discipline of Jumping. The Horse was ridden by Mr. Khaled Abdulaziz Al Eid, who is the Person Responsible in accordance with Article 118 of the GRs (the “PR”).

2. The Horse was selected for sampling on 3 December 2011.

3. Analysis of blood sample no. 5511974 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory (“HKJC”), by Dr. Nola Hua Yu, Chemist, under the supervision of Dr. David Kwan Kon Leung, Racing Chemist. The analysis of the blood sample revealed the presence of Phenylbutazone and Oxyphenbutazone.

4. Phenylbutazone is a non steroidal anti-inflammatory drug (NSAID), predominately used as an anti-inflammatory and analgesic for musculoskeletal conditions. Oxyphenbutazone is a metabolite of Phenylbutazone and is also a non steroidal anti-inflammatory drug (NSAID) with anti inflammatory and analgesic effects. Both substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substance List.

5. No request had been made for the use of Phenylbutazone and Oxyphenbutazone on the Horse, and no Equine Therapeutic Use Exemption (“ETUE”) or medication form had been presented for these substances at the Event. Therefore, the positive finding for Phenylbutazone and Oxyphenbutazone in the Horse’s sample at the Event gives rise to a Controlled Medication Rule Violation under the FEI EADCMRs.

6. Under the ECM Rules, in cases of Controlled Medication Substances, a PR may elect the so-called “Administrative Procedure” (also referred to as “Fast Track”), provided the prerequisites of Article 8.3.1 of the ECM Rules are fulfilled. It is undisputed that the PR would qualify for the Administrative procedure if this was his first Controlled Medication violation in eight (8) years. However, the PR committed a first Medication Control Rule violation in January 2005, and is therefore not considered a first time offender within the meaning of Article 8.3.1(b) of the ECM Rules, which are the rules setting out eligibility for the Administrative Procedure. Nonetheless, the present violation is only considered a first violation for

sanctioning purposes under the ECM Rules because to be considered a multiple violation triggering increased sanctions, the second violation has to occur in the same four (4) year period.

#### **4.2 The Proceedings**

7. The presence of the Controlled Medication Substances following the laboratory analysis, the possible rule violation and the Consequences implicated, were officially notified to the PR by the FEI Legal Department on 2 February 2012, through the Saudi Arabian Equestrian National Federation ("KSA-NF"). Together with the Notification Letter, the FEI submitted an Acceptance Letter signed by the PR admitting to a previous Controlled Medication violation in 2005.

#### **4.3 The B-Sample Analysis**

8. The PR was also informed in the Notification Letter of 2 February 2012 that he was 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 analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

9. By letter dated 13 February 2012, the PR confirmed that he wished for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis. The PR did not request a representative for the B-Sample analysis.

10. The B-Sample analysis was performed on the blood Sample at the FEI approved HFL Sport Science Laboratory in Newmarket, England, on 22 February 2012. The B-Sample analysis of the blood found the presence of Phenylbutazone and Oxyphenbutazone. This confirmed the analytical findings of the A-Sample. The results of the B-Sample analysis were notified to the PR on 1 March 2012.

#### **4.4 The Further Proceedings**

11. By letter dated 17 February 2012, Counsel for the PR requested an expedited process given the proximity of the 2012 London Olympic Games, for which the PR intended to qualify as member of the Saudi Equestrian team (the "Saudi team"). The FEI confirmed that it did not have any objection to expediting the proceedings.

12. By letters dated 13 February 2012 and 17 February 2012, the PR requested information about the levels of the Controlled Medication Substances found in the Horse and the concentration of these Substances used in the reference sample.

13. On 23 February 2012, the FEI responded to the request by the PR stressing that the Prohibited Substances detected are not classified as Threshold Substances, and that therefore the levels are irrelevant and, any concentration of the substances detected are prohibited during competition. That the HKJC was nonetheless contacted following the PR's request, and since estimated concentrations were readily available, in an attempt to be as helpful as possible, the FEI provided the estimates to the PR. The estimated concentrations for the two substances were Phenylbutazone at about 340ng/ml, and Oxyphenbutazone at approximately 65ng/ml. The FEI further explained that according to the HKJC, for the confirmation of the Phenylbutazone, the approximate concentration of the reference standard was in the order of 50,000 ng/ml, while for the Oxyphenbutazone analysis, it was in the order of about 10,000 ng/ml.

14. By letter of 24 February 2012, the PR elected to voluntarily suspend himself without prejudice pending the Final Decision of the FEI Tribunal, pursuant to Article 10.8.4 of the ECM Rules.

15. On 21 March 2012, the PR submitted his response to the charge and his explanations. Significantly, the PR accepted the results of the analytical findings of the A- and B- Sample. Together with his submission, the PR provided the following witness statements:

(a) Statement by Mr. Ziyad Salahuddin Y Abduljawad, the managing director at Saudi Equestrian. Mr. Abduljawad explained that the Saudi team exercises "*a great deal of caution*" to ensure that its horses do not come into contact with Prohibited Substances. He denied the deliberate administration of Phenylbutazone and Oxyphenbutazone.

(b) Statement by Mr. Badr Ibrahim Alfayiz, Secretary of the Director of Saudi Equestrian, stating that he attended the stables on 18 February 2012 and took photographs of the stable which he provided with his statements.

(c) Statement by Mr. Rogier Van Iersel, team manager at Saudi Equestrian and President of the Ground Jury at the Event. Mr. Van Iersel submitted that the weather was exceptionally bad at the time of the Event and that due to these conditions he permitted horses and their riders to wait under cover in the International Riding School stable yard until they were called up for their veterinary inspection. He further explained that the conditions of the stables at the time of the Event were the same as those conditions shown in the pictures of the stables provided by Mr. Alfayiz.

(d) Statement by Mr. Sami Alduhami, team director at Saudi Equestrian. Mr. Alduhami stated that the stables at the International Riding School had not been cleaned prior to the arrival of the horses at the Event. He further confirmed the condition of the stables at the time of the

Event as being the same as those shown in the pictures of the stables provided by Mr. Alfayiz.

(e) Statement by Dr. Philippe Benoit, team veterinarian for Saudi Equestrian and a member of the FEI Veterinary Committee. Dr. Benoit testified that his responsibility was the treatment of the 14 competition horses of the Saudi team. That he was assisted by his business partner Dr. Philippe Heiles and a local Belgian veterinarian, Dr. Hennau. That he worked closely with stable manager Mr. Peeter Aitken, and that strict controls were in place regarding the care and treatment of the Saudi team's horses. With respect to the Horse, Dr. Benoit contended that it had been suffering from some low back pain issues and a recent back cervical joint inflammation, but had not been in need of any further treatment since autumn 2011. Together with his statement, Dr. Benoit submitted various records of the Horse's treatments, stating that according to those records, the Horse had received no treatment in the run up to the Event. Dr. Benoit further asserted that he did not administer "any Bute prior to the Riyadh Event", and that it was not a medication he would ever advise administering to any Saudi Equestrian horse. Dr. Benoit concluded that in his view, the only explanation for the occurrence of Phenylbutazone and Oxyphenbutazone in the Horse's system was the ingestion of trace amounts from the Horse's surroundings.

(f) Statement by Mr. Peeter William Aitken, stable manager at the Saudi Equestrian stables at Hara de Wisbecq near Brussels. Mr. Aitken submitted that the Saudi team has strict controls and procedures in place to ensure that its horses do not come into contact with Prohibited Substances. That all medications were kept in a locked cupboard, for which only he held the key. Mr. Aitken provided the Horse's Medication Logbook as an exhibit and denied the deliberate administration of Phenylbutazone and Oxyphenbutazone.

(g) Statement by Dr. Mahros Abdelkarim, one of the treating veterinarians at the International Riding School. Dr. Abdelkarim confirmed that Phenylbutazone is regularly used to treat horses at that facility.

(h) The PR also submitted an expert report from Dr. Mark Dunnett of Independent Equine Nutrition. Based on the assumption that Phenylbutazone is in common use at the International Riding School as alleged by the PR, Dr. Dunnett proposed three potential scenarios in which the stable environment could have become contaminated with Phenylbutazone, and further proposed two ways by which the Horse could have ingested Phenylbutazone from its potentially contaminated stable at the International Riding School. Dr. Dunnett concluded that contamination of the stable environment with residues of Phenylbutazone from legitimate treatment of other horses prior to the Event was a plausible explanation for the presence of the levels of Phenylbutazone and Oxyphenbutazone detected in the Sample. That Phenylbutazone bound extensively to the fibre in the digesta and that this could lead to extensively delayed absorption. Dr. Dunnett further described the estimated levels of

Phenylbutazone and Oxyphenbutazone, as provided by the HKJC, as being very low and that it was unlikely that they had any therapeutic or performance enhancing effect.

16. The PR explained that the Horse left Europe to fly to the Event on 26 November 2011. That upon arrival in Riyadh, the Horse was taken into quarantine, which it left on 29 November 2011. That upon arrival at the Event, a mandatory veterinary check had been carried out on the Horse, which it had passed. That at the time of the Event, Riyadh was experiencing exceptionally wet weather conditions. The PR submitted that due to these weather conditions, the preparations of the stables for the Event were rushed as the horses had to be hurried into the dry stables out of the wet weather. That the International Riding School contained the designated Event stables and were situated next to the Event grounds. The PR contended that his Horse's stable had not been cleaned and washed out before the horses arrived. That no fresh bedding had been laid down and a dirty wall mounted feed bucket had been left in the stable. The PR submitted that the feed bucket contained an accumulation of feed which had dried to the sides of the bucket. The PR explained having instructed his groom to clean the bucket, but that before the groom could do so, the Horse had nosed around in the old bedding and in the dirty feed bucket. The PR further submitted that Dr. Mahros Abdelkarim, treating veterinarian at the International Riding School, had confirmed that Phenylbutazone is regularly used in powdered form at the Stables, and that Dr. Dunnett had explained that contamination at the Stables could have possibly lead to the positive test result. The PR concluded that on the balance of probabilities "it is more likely than not" that the reason for the presence of the Prohibited Substances in the Horse's sample was "the unclean and contaminated" stabling, i.e. that the Prohibited Substances came to be present in the Horse's system from the inadvertent ingestion of powdered Phenylbutazone present in the Event stables at the International Riding School in Riyadh. Lastly, the PR contended that due to the measures taken by him to ensure that his horses do not come in contact with Prohibited Substances, there was no other credible explanation for the presence of the Prohibited Substances.

17. On the law, the PR argued that there was an inconsistency between Article 10.6.3 and Article 8.3 of the ECM Rules. That whereas both regulations dealt with the significance of an earlier violation, in the context of Article 10.6.3 of the ECM Rules, a period of four (4) years would be taken into account, and in the context of Article 8.3 of the ECM Rules, a period of eight (8) years had to be taken into account. That this inconsistency caused unfairness to the PR, and should be construed in favour of the PR when determining the length of any period of suspension. The PR, referring to the witnesses presented by him, denied that he (or anyone else to his knowledge) had administered Phenylbutazone and/or Oxyphenbutazone to the Horse in the run up to the Event. He accepted that in order for no, or a reduced period of Ineligibility to be imposed on him, he had to establish, on the balance of probabilities, how the Prohibited Substances entered the Horse's system, and that he bears "No

Fault or Negligence" for the presence of Phenylbutazone and Oxyphenbutazone in the Horse's sample pursuant to Article 10.4.1 of the ECM Rules. Regarding specifically the question of Fault or Negligence for the rule violation, the PR contended that he exercised "utmost caution", asserting that he takes appropriate steps to avoid the risk that his horses come into contact with Prohibited Substances. That he could not have reasonably known or suspected that the Horse would come into contact with Phenylbutazone and Oxyphenbutazone at the International Riding School stables. He argued that given the circumstances described by him, he bore No Fault or Negligence (as used in Article 10.4.1 of the ECM Rules) for the presence of the Prohibited Substances in the Horse's Sample, with the consequence that any period of Ineligibility that might otherwise be imposed should be eliminated. The PR contended that even if the FEI Tribunal was not satisfied that he bears No Fault or Negligence, it would be unfair and disproportionate to impose a period of Ineligibility of more than two months. Citing previous CAS decisions, the PR submitted that to impose the maximum sanction available under the Rules would be neither just nor proportionate in this "rare case". That in order to determine any period of Ineligibility, the Tribunal should take into account the following factors (a) the inconsistency of the ECM Rules relating to the relevance of previous offences, (b) the allegedly low levels of the Prohibited Substances in the Horse's sample as referred to by Dr. Dunnett, and that by way of comparison, Phenylbutazone was a Threshold Substance in the United States, with the level set at either 2,000 ng/ml or 5,000 ng/ml, (c) the PR's knowledge and adherence to the EADCMRs, (d) the upcoming Olympic Games, (e) the effect any period of Ineligibility would have on the Saudi team, and (f) the exceptional circumstances surrounding the Event and the PR's exercise of utmost caution. Citing the FEI Tribunal decisions in the cases of CAMEO RENAZAR (2011/CM01; Final Tribunal Decision dated 21 November 2011) and TIBURON (2011/CM06, Final Tribunal Decision dated 2 December.2011), the PR referenced the current approach taken by the Tribunal in Controlled Medication cases, and the discretion it exercised with respect to the duration of a period of Ineligibility. The PR contended that unlike in TIBURON and CAMEO RENAZAR, he and his team were very knowledgeable about the EADCMRs, were careful to ensure appropriate withdrawal times, and – if needed – compliance with the FEI process for ETUEs. Further, the PR contended that he had done everything he could to determine the cause of the presence of the Prohibited Substances. The PR finally submitted that given the importance of the Event in question, it had not been possible for him to withdraw and that he had no choice but to accept the stabling provided.

18. Concluding, the PR highlighted that he had elected a period of Voluntary Provisional Suspension on 24 February 2012. The PR submitted that the FEI had accepted this Voluntary Suspension and that therefore any period of Ineligibility should credit the Provisional Suspension from 24 February 2012 through to the date of a Final Decision in this case.

19. On 10 April 2012, the FEI provided its response to the PR's submission. Together with its submission, the FEI submitted an excerpt of the Veterinary Report of the Event, according to which the stables had been in a satisfactory condition, and had been adequately cleaned prior to the arrival of the horses.

20. The FEI submitted that its burden, as stipulated in Article 3.1 of the ECM Rules, is to prove to the "comfortable satisfaction" of the Tribunal that an ECM Rule violation has occurred. That an Article 2.1 violation is a strict liability offence, established merely by proof that a Controlled Medication Substance was present in a horse's sample at an Event. The FEI submitted that the results of the A- and B-Sample analysis constitute "sufficient proof" of such a violation. That the PR had not challenged the positive findings, and that it had therefore discharged its burden of proving that the PR had violated Article 2.1 of the ECM Rules.

21. That in order to reduce or eliminate the sanctions to be imposed on the PR for the rule violation, the PR had to establish how the Prohibited Substances had entered the Horse's system. That furthermore, he had to establish that he bore "No Fault or Negligence" for the Rule violation, i.e. that the Prohibited Substances got into the Horse's system despite the use of 'utmost caution'. That in order to establish the presence of the Prohibited Substances, the PR had to show that the innocent explanation is more likely than not the correct explanation. That, as held by the FEI Tribunal in the case CAMIRO (Case 2008/23, Final Tribunal Decision dated 22 December 2008), the PR cannot merely deny wrongdoing and advance an innocent explanation. The FEI referred to case law from both the FEI Tribunal (amongst them CAMIRO and KARABIL KAIYA HAI, Case 2011, BS09, Final Tribunal Decision dated 21 March 2012) and the Court of Arbitration for Sport ("CAS") (e.g. IRB v Keyter, CAS 2006/A/1032, WADA v Stanic, CAS 2006/A/1130) as examples of cases where an athlete or PR did not, on the balance of probabilities, meet this legal burden. The FEI further submitted that applying the above principles, the PR had not met his burden of proof. The FEI argued that (i) the PR's evidence that Phenylbutazone is regularly used at the International Riding School established nothing more than its potential presence at the Stable. That the evidence of Dr. Abdelkarim failed to establish what form of Phenylbutazone was in use at the Stables, how many horses in the Stable were treated with Phenylbutazone and what quantities were given, (ii) the allegation that the stables of the International Riding School were unclean was contradicted by the Veterinary Report of the Event; further that it would not establish that contamination of the Horse's system is more likely than not to have happened at the Event. The FEI further queried as to why the PR had not reported the conditions to the Event organiser, or made a note of such conditions on the FEI Medication Control Form at the time of the sampling, (iii) the evidence of the contamination of the stable was neither specific nor persuasive; in particular, the PR was relying on photographs of the stable taken in February 2012, approximately two (2) months after the Event. The FEI further took the position that the allegations made by Dr. Dunnett in his report were based on speculation,

and that the PR had failed to establish that one of the means of ingestion offered by Dr. Dunnett was more likely than not to have occurred. That furthermore, there were several other explanations for the presence of the Prohibited Substances. In this context, the FEI argued that the PR had used a local groom at the Event, but that no statement or evidence had been provided by that local groom. The FEI therefore concluded that the PR had not established how the Prohibited Substances had entered the Horse's system.

22. With regards to the PR's Fault or Negligence for the rule violation, the FEI argued that the PR did not establish that he had exercised 'utmost caution' to ensure that no Prohibited Substance came to be present in the Horse's system. The FEI submitted that the PR could have taken a number of additional "reasonable and practical" steps. That for example the PR had not notified any FEI official of the alleged poor stable conditions, had not requested a clean stable, had not noted the alleged poor condition of the stable on the FEI Medication Control Form and had not cleaned the stable before putting the Horse inside.

23. Regarding the period of Ineligibility and the factors which the PR had asked to be taken into account when assessing such a period, the FEI argued that there was no inconsistency between Article 8.3.1 and Article 10.6.3 of the ECM Rules. The FEI acknowledged that in accordance with Article 10.6.3 of the ECM Rules, the current violation constituted the PR's first violation since according to Article 10.6.3 of the ECM Rules, a period of four (4) years had to be taken into account in the context of the question of multiple violations. That however, under the rules governing the eligibility for the Administrative Procedure (or "Fast Track procedure"; Article 8.3 of the ECM Rules), a period of eight (8) years was the relevant time frame, and that therefore, the PR's case had not been eligible for the Fast Track procedure. That furthermore, there was no inconsistency between these two rules, since in the fight against doping, it was fair and reasonable to impose more severe sanctions on a Person Responsible who reoffends the rules within four (4) years, than on a Person Responsible who reoffends the rules within eight (8) years. That the two rules had distinct and different purposes, and did not have to be consistent with each other. With regard to the allegedly low levels of the Prohibited Substances, the FEI submitted that Phenylbutazone and Oxyphenbutazone are not Threshold Substances and that their presence in the Horse's system at any concentration constitutes an ECM Rule violation. That all positives have the potential to have therapeutic effects and that therefore it would be wrong to consider that the allegedly low levels are necessarily consistent with a contamination theory. Regarding the PR's arguments with respect to the upcoming Olympic Games, the FEI relied on the commentary of the WADA Code on which the ECM Rules are based, stressing that according to that commentary, the timing of the sporting calendar is not a relevant factor to be considered in determining sanctions. Further, that considering the effect of the potential period of Ineligibility on the Saudi Team would be unfair both to other PRs, as well as to the other teams and competitors participating in the Olympic Games who had

ensured their own compliance with the EADCMRs. Finally, that despite the alleged exceptional circumstances, it was not possible to assess the fault of the PR given the absence of sufficient evidence as to how the Phenylbutazone and Oxyphenbutazone had entered the Horse's system. Lastly, the FEI addressed the FEI Tribunal cases of CAMEO RENAZAR, Case 2011/CM01 Final Tribunal Decision dated 21 November 2011 and TIBURON, Case 2011/CM06, Final Tribunal Decision dated 2 December 2011, both cases in which a period of Ineligibility of eight (8) months had been imposed on the PR. The FEI explained that in TIBURON, the PR had established the source of the Prohibited Substance detected, and that the factors on fault considered by the Tribunal were relevant to the circumstances in which the PR had shown the Prohibited Substances had entered the horse's system. That the factors the PR had raised as distinguishing his case from TIBURON (i.e. that he and his team were very knowledgeable of the EADCMRs, were careful to ensure withdrawal times and – if needed – compliance with the FEI process for ETUEs) were irrelevant when determining the level of fault attributable to the PR. Lastly the FEI submitted that the professional status of the PR, his age, experience and the level of the Event should be taken into account.

24. With regard to the timing of any period of Ineligibility, the FEI submitted that it had no objection to the commencement of the period of Ineligibility on 24 February 2012. The FEI further requested that pursuant to Article 9 of the ECM Rules, the results from the Competition at which the PR competed with the Horse are to be disqualified, together with the forfeiture of all medals, points and prize money. In addition the FEI requested that pursuant to Article 10.1 of the ECM Rules, the Tribunal should disqualify the PR's other results obtained with the Horse at the Event.

25. On 13 April 2012, the PR filed its rebuttal submission. The PR submitted that the evidence provided by him explained in detail the chain of events that led the Horse to ingesting traces of Phenylbutazone and that this was sufficient to discharge the burden upon him, thereby distinguishing his case from the case law referenced above by the FEI.

26. The PR specifically contended that the evidence was clear that Phenylbutazone "is easy to administer in powder form". He further stipulated that it was inappropriate for the FEI to expect Dr. Abdelkarim to give evidence on the exact number of horses treated and the quantities administered. The PR submitted that notwithstanding that it could be readily presumed that the dose would correspond to the dose generally administered, it was unclear how this evidence would materially assist the Tribunal, and that he should not be prejudiced by the "failure of others to retain such records". In conclusion, the PR submitted that Dr. Abdelkarim's evidence had to be read in conjunction with all the other factual evidence. Additionally, no inference should be taken from the PR's failure to notify officials of the stable conditions as these actions would not have altered the factual circumstances that led to the Horse coming into contact with the Prohibited Substances. Regarding the FEI's argument on

the cleanliness of the Stables, the PR submitted emails dated 9 April 2012 between the FEI and the Veterinary Delegate at the Event, highlighting that according to those emails, only “most” of the stables had been checked and that further the check had been performed before the heavy rainfall and storm conditions.

27. The PR reiterated that he had established that he bore No Fault or Negligence for the rule violation and that therefore, all sanctions should be eliminated, under Article 10.4.1 of the ECM.

28. Considering the factors the PR asked the Tribunal to take into account when considering the proportionality of any period of Ineligibility, the PR referred to the CAS decision in the case of Puerta (Puerta –v- ITF, CAS 2006/A/1025), arguing that CAS had taken into account precisely the same type of considerations that he had asked the Tribunal to take into account.

#### **4.5 The Hearing**

29. The hearing took place on 18 April 2012. Both Parties agreed that the FEI had discharged its burden under Articles 2.1 and 3.1 of the ECM Rules, and established sufficient proof of a rule violation under Article 2.1 of the ECM Rules. The PR therefore accepted liability for a rule violation committed by him under Article 2.1 of the ECM Rules.

30. The FEI, addressing the question of the source of the Prohibited Substances, argued that case law precedents (WADA –v- Stanic & Swiss Olympic Association, CAS 2006/A/1130) and the FEI Tribunal decision in KARABIL KAIYA HAI, Case 2011/BS09, set a high burden upon the PR, and that in the case at hand, the PR had failed to meet this burden since he did not prove any “concrete” source for the Prohibited Substances. That the list of exceptional circumstances presented by the PR only provided “potential”, but not “probable” means of ingestion.

31. Referring to the pending case of LOBSTER, Case 2012/CM03, involving another team member of the Saudi team, Counsel for the PR argued that it was unusual, and could not be ignored that two members of the same team had failed doping tests for the same Prohibited Substances, and at similarly low levels. Counsel for the PR further submitted that the cumulative effect of the evidence submitted by the PR had established the source of the Prohibited Substances. That Dr. Dunnett’s report had not been challenged by expert evidence submitted by the FEI, and that therefore, while hypothesising, it highlighted that the levels of the Prohibited Substances were consistent with contamination. That the PR bore no fault or negligence for the rule violation as the witness statements submitted by the PR highlighted that the PR had done everything he could do to prevent the risk of the Horse being exposed to Prohibited Substances. Relying on the case of CJS GAI FOREST, Case 2009/25, Final Tribunal Decision dated 14 September 2010, the PR argued that the prerequisite of “No negligence or no fault” has to be achievable and that a

“reasonableness test” had to be applied. Counsel for the PR reiterated that even if the PR failed to prove no fault or negligence for the rule violation, it would be grossly disproportionate to impose a sanction that would jeopardise the Saudi team’s and the PR’s ability to compete at the Olympic Games. Counsel for the PR further maintained that there was a conflict between Article 8.3.1 and Article 10.6.3 of the ECM Rules.

32. The following witness testimony was adduced:

Mr. Ziyad Salahuddin Y Abduljawad explained the Saudi Equestrian team’s ethos and testified that discipline was a very important part of the highly professional structure of the team. He explained that guidelines had been set and that it had been made clear to the team riders that they would be excluded from the team should they breach any FEI Rules. That the London Olympic Games was one of the reasons for which the team had been created. Mr. Abduljawad explained that it was very important for the PR, one of the team’s best riders, to be released from any sanction by 15 May 2012, in order to enable him to obtain a certificate of capability on a second horse to provide the team with flexibility at the Olympic Games. Mr. Abduljawad further clarified that he had not been present at the Event in question. He confirmed that he was aware that a “local groom”, known to the PR, had been in charge of the Horse. Further that he was familiar with the EADCMRs, without knowing them “from beginning to end”. That compliance with these rules was a responsibility for the veterinarians. With regards to the Olympic Games, he noted that four (4) team members was the ideal number to field a team, but that a team could also compete with only three (3) riders.

33. The next witness to testify was the PR:

The PR testified as per his witness statement and confirmed that the stables were in the conditions as shown by the photos provided by Mr. Alfayiz. That the stables at the Event had not been cleaned, and that no clean bedding had been available. The PR acknowledged however that he was not present when the Horse arrived at the Event, and that he had arrived approximately two hours after the Horse. That he had known the “local groom” taking care of the Horse at the Event for many years, and trusted him. When questioned on his allegation that there had not been any other option then to put the Horse into the stable, despite its condition at the Horse’s arrival, the PR acknowledged that generally, it would be possible for example for a horse to stand on concrete until after the stable had been cleaned out. That it would not have been possible for this Horse however since it was a stallion. That furthermore, the trot up had taken place close to the Horse’s stable and that therefore it had been even less possible to have the Horse remaining outside of the stable. The PR confirmed being aware of the EADCMRs, stating that whereas he had not read them, it was the team’s veterinarian who explained all the anti-doping rules to him. The PR further confirmed that after he had become aware of the positive test, he had questioned his groom to see if he had administered any Phenylbutazone, and that the groom had denied any

such administration. Regarding the Horse's prior treatment for a back injury in the autumn of 2011, the PR explained that this occurred at a show in Italy, after which the Horse showed up lame. That upon discovery he had immediately ceased competing and returned the Horse to Belgium for treatment.

34. Dr. Dunnett, despite being available for testimony, was not heard since the Parties agreed that Dr. Dunnett's report established the possibility of contamination, but that it did not contain any specific explanation for the presence of the Prohibited Substances.

35. The next witness to testify was Mr. Rogier Van Iersel, team manager. Mr. Van Iersel testified that he was acting as the President of the Ground Jury at the Event. He confirmed the adverse weather conditions as referred to by the PR. That because of the bad weather conditions, the start had to be delayed by two days, and that the warm up round had to be cancelled since the ground conditions were so precarious. Mr. Van Iersel confirmed that not him, but the Veterinary Committee and the Chief Steward were responsible for the stabling at the Event. He underlined the vast difference in stabling between European and Middle Eastern competitions. He acknowledged, however, that no concerns had been raised by anybody about the testing venue conditions at the time of the Event.

36. Mr. Sami Alduhami, team Director, testified that he had been at the Event, and confirmed the adverse weather experienced. Regarding the stables' usage prior to the Event he contended that usually, the Saudi Equestrian Federation took over the premises about 2-3 weeks before the Event. That the poor condition of the stables resulted from the inclement weather and from the fact that all outdoor facilities had to be relocated under cover very quickly. That matters had become more organised on the second day of the Event. Mr. Alduhami further acknowledged that Phenylbutazone was readily available in Saudi Arabia, and was sold in pharmacies without the necessity for a prescription. Further that he had known the Horse's groom for some time, and had questioned him when he discovered the positive test, but had received no details in response.

37. The final witness to give evidence was Dr. Philippe Benoit, the team veterinarian, who confirmed his written statement. Dr. Benoit further confirmed that all medications in the team yard are locked away and that the team manager only had access to them. That any administration had to be carried out by the team manager or the local veterinarian. That in addition, education on anti doping matters was provided to the team members. That Phenylbutazone was not regularly used by the team given the ease with which it is capable of being disbursed into the environment, and the fact that its withdrawal times can vary dramatically. Dr. Benoit testified further that the therapeutic benefit level for Phenylbutazone was 4,000ng/ml and therefore considerably higher than the levels recorded in the Horse's sample. Dr. Benoit also acknowledged that the detection time for Phenylbutazone varied between 9 and 12 days, depending on whether

it was administered orally or intravenously. Further that the levels detected in the Horse could be consistent with a prescribed dose administered 5-10 days prior to the Event or with contamination. When questioned over the Horse's Medication Log Book, Dr. Benoit acknowledged that the Horse, a stallion, frequently suffered from chronic lumbar pain due to excessive bucking, but that the last treatment for this problem had been given in October 2011. That in case any medication would be prescribed, he would clearly note a doping warning for the rider. When questioned about the Event, Dr. Benoit acknowledged that he had not been present, as he only travelled to major shows. That if any medication is administered during travel to or while in quarantine, this would be noted in a report which would ultimately filter back to the PR. He contended that the Horse had arrived sound in Saudi Arabia, and that there was therefore no clear explanation as to how the Phenylbutazone came to be present in the Horse's system.

38. This concluded the evidence and closing submissions followed.

39. The FEI submitted in its closing statement that the PR had not shown that it was more likely than not that the Prohibited Substances had entered the Horse's system as a result of the Horse ingesting the substances in a contaminated stable at the Event. The FEI accepted the credibility of all the testimony given but submitted that the PR had provided no definitive explanation for the presence of the Prohibited Substances. While acknowledging the possibility of ingestion via contamination, the FEI argued that the PR had not shown any causal connection between the alleged contamination and the concentrations detected. That insofar as an ECM Rule violation was at stake, the Tribunal had the discretion to impose a period of ineligibility of 0-2 years, acknowledging that proportionality would be an important consideration for the Tribunal. The FEI acknowledged that there was no precedent yet under the applicable rules regarding the length of Ineligibility to be imposed for a Controlled Medication violation where it was the PR's first Controlled Medication violation but he could not benefit from the "Fast Track" procedure. Citing the FEI case of TACKERAY, Case 2009/19, Final Tribunal Decision dated 24 September 2009, the FEI argued that a similar period of Ineligibility of four (4) months would be appropriate, since the PR could have done more to prevent contamination.

40. In response, Counsel for the PR insisted that the cumulative effect of the evidence was sufficient to meet the legal burden of proving how the Prohibited Substances came to be in the Horse's system. Referring to the case of ITF v Gasquet, CAS 2009/A/1926, Counsel for the PR argued that in that case, the CAS panel held that for it to be satisfied that a means of ingestion is demonstrated on the balance of probabilities, it simply meant, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. In summary, and relying on Dr. Dunnett's report, Counsel for the PR submitted that on a balance of probabilities, the PR had proven that Phenylbutazone was in use at the International Riding School and that the stable in which the Horse was put was potentially

contaminated. The PR's Counsel relied on the FEI Tribunal case of CJS GAI FOREST 2009/25, in which the Tribunal found No Fault, based in part on the 2006 CAS advisory opinion (issued on request of FIFA and WADA) which reasoned that 'No Negligence no fault' had to be achievable and that a 'reasonableness test' therefore had to be applied. He further contended that the PR could not have done anything more to prevent the Horse coming into contact with the Prohibited Substances. That even if the PR failed to satisfy the Tribunal that he bears no fault or negligence, the Tribunal should consider the proportionality of any sanctions such as the way in which the Prohibited Substance came to be taken, its nature, the amount of it present and whether it could have affected performance, the impact of a sanction relative to the seriousness of the offence and the effect on the personal circumstances of the PR (Puerta v ITF, CAS 2006//A/1025). Regarding the length of any period of Ineligibility, Counsel for the PR referred to the FEI Tribunal cases of TIBURON, Case 2011/CM06, Final Tribunal Decision dated 2 December 2011 and CAMIRO, Case 2008/23, Final Tribunal Decision dated 22 December 2008 submitting that these two cases involving Controlled Medication Substances highlighted the Tribunal's high level of discretion available in determining the length of any period of Ineligibility. Based on proportionality, the period of Ineligibility should be no more than two (2) months. The PR accepted that his results from the Competition should be disqualified, and that some fine will be imposed, and nominal costs be awarded.

## **5. The Decision**

### **5.1. Jurisdiction**

41. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and ECM Rules.

### **5.2. The Person Responsible**

42. The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he competed with the Horse at the Event.

43. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of both the HKJC and the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone and Oxyphenbutazone in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Phenylbutazone and Oxyphenbutazone are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List.

44. 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. This is undisputed between the Parties.

45. 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, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.

46. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules. The standard of proof is that the PR must establish "specified facts or circumstances" "by a balance of probability".

47. The Tribunal finds that the PR has failed to establish on the balance of probability how the Phenylbutazone and Oxyphenbutazone entered the Horse's system. The Tribunal accepts that the Horse's Medication Logbook and the testimony of Dr. Benoit show no administration of Phenylbutazone and Oxyphenbutazone. The Tribunal is however not persuaded by the explanation provided by Dr. Dunnett that there was ingestion by contamination. The Tribunal finds that in the first place, insufficient evidence was offered by the PR regarding the alleged contamination. The Tribunal further considers that the PR's groom had cleaned the stable shortly after the arrival, and thereby further reduced the risk of contamination. Furthermore, the Tribunal holds that insufficient evidence has been adduced to establish the causal link between the alleged contamination and the positive test result. It is therefore the opinion of the Tribunal that the PR has failed to prove that ingestion by means of exposure to a contaminated stable environment was more likely than not to be the source of the Phenylbutazone and Oxyphenbutazone. Consequently the Tribunal does not need to address the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the positive findings as required by Articles 10.4.1 or 10.4.2 of the ECM Rules in order to eliminate or reduce sanctions.

48. However, since this is a Controlled Medication case further analysis is required. In deciding the sanctions, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility, meaning that the presumptive starting point of two (2) years as provided for in the EAD Rules (EAD Rules Article 10.5. of the EAD Rules) does not apply in cases of Controlled Medication Substances. As the Tribunal finds that the PR failed to prove how the Prohibited Substances entered the Horse's system, it is not possible for the Tribunal to assess the PR's Fault or Negligence for the rule violation. Therefore, the Tribunal is forced to take into account other, more objective factors in order to determine the period of Ineligibility. The

Tribunal takes into consideration as mitigating factors the fact that a professional team structure was in place with clear procedures for avoiding anti-doping rule violations, that the PR's team employed a professional veterinary staff whom the Athletes had access to both during and outside of business hours, the fact that the 2005 violation was also for a Controlled Medication, the prompt admission by the PR of the rule violation and the Voluntary Suspension elected by him. The Tribunal declines to take into account the (allegedly low) levels of the Phenylbutazone and Oxyphenbutazone detected. Referring to the CAS decision in the Puerta case cited by the PR, the Tribunal is of the opinion that in this context it is not comparable with the present case, insofar as the panel in the Puerta case considered the question of quantity in the context of no significant fault or negligence (para 11.5.7), and as explained above, that consideration may not be made by this Tribunal in the case at hand. The Tribunal further finds that insofar as Phenylbutazone and Oxyphenbutazone are not Threshold Substances, any quantity of those substances is considered as a positive. Furthermore, the quantity for non Threshold substances is not established in normal screening analytical procedures, and therefore, the quantity was only estimated in the case at hand by the HKJC. Lastly, the FEI has established Screening Limits for all Prohibited Substances, which are established on the basis of risk management, to ensure amongst others the integrity of the sport (Veterinary Regulations, Annex II (4)). The Screening Limits of both Phenylbutazone as well as Oxyphenbutazone have been exceeded in the case at hand. The Tribunal is of the opinion that it is for the FEI to determine the appropriate Screening Limits and that therefore, it is not for the Tribunal to draw any conclusions from the alleged low levels of any Prohibited Substances.

49. The Tribunal does not take into account the supposed inconsistency between Article 8.3.1 and Article 10.6.3 of the ECM Rules. Although both rules relate to the relevance of previous offences, the rationale for each is different. The Tribunal notes that it is the FEI's prerogative to establish time limits regarding the applicability of administrative procedures and the definition of "second violations", and that there is no legal or other reason to use the same time period both in the context of Article 8.3.1 and Article 10.6.3 of the ECM Rules. The Tribunal does not take into consideration the upcoming London Olympic Games and the alleged effect of the PR's suspension on the Saudi Equestrian team. The Tribunal is of the opinion that whereas the commentary of the WADA Code (see Paragraph 23 above), relied upon by the FEI, does not directly apply in this context, the reasoning behind it does. Further, if the upcoming Olympic Games would be considered in determining the sanctions, it is evident that there is a risk that different periods of suspension would be imposed in the period directly before, and shortly after such major events as the Olympic Games. In the opinion of the Tribunal, the rules have to be applied consistently throughout the whole Olympiad (the 4 years term between the Olympic Games). Although the Tribunal is aware of the importance of the Olympic Games, considering the upcoming Games while

determining the length of the PR's suspension would not provide a level playing field in a sports calendar that offers major events almost every year. Further, considering the alleged effect on the Saudi Equestrian team would lead to a substantial unequal and unjustified special treatment of PRs that could destabilise the level playing field. The Tribunal further understands that there are other riders from the Saudi team which can be sent to the Olympic Games. Lastly, the decision of the Saudi team to rely on a limited number of six (6) riders only was at its own risk. Regarding the case law referred to by the Parties in the context of sanctions, in particular the cases of TIBURON and CAMEO RENAAR, the Tribunal considers that no conclusion may be drawn from TIBURON insofar as the PR in that case had established the source of the Prohibited Substance. As regards CAMEO RENAAR, the Tribunal finds that whereas there are some similarities between that case and the case at hand, the PR in CAMEO RENAAR was new in the sport, and apparently very inexperienced.

50. By determining the duration of the period of Ineligibility, the Tribunal is not bound by the recommendation of the FEI. The Tribunal is of the opinion that the proposed period of Ineligibility of four (4) months is insufficient in this case, where the range is up to two (2) years. Unlike the Puerta case, in which the athlete succeeded in establishing how the substance detected had entered his system, the present case is far from being an exceptional case that would force the Tribunal to further take into account the principle of proportionality. The Tribunal finds however that in accordance with Article 10.8.4 of the ECM Rules, the PR shall receive a credit for the period of Provisional Suspension voluntarily elected as of 24 February 2012.

### **5.3 Disqualification**

51. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the ECM Rules. The Tribunal is further disqualifying the PR's other results obtained with the Horse at the Event, in accordance with Article 10.1 of the ECM Rules.

### **5.4 Sanctions**

52. Under the ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance is up to a two-year Ineligibility period. The FEI 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 **8 (eight) months** to be effective and without further notice from 24 February 2012, the day on which the PR elected a period of Voluntary Provisional Suspension.

The Voluntary Provisional Suspension is thereby credited against the final suspension, which will expire on 23 October 2012, at midnight.

- 2) The PR is fined **CHF 1000.-**.
- 3) The PR shall contribute **CHF 3000.-** towards the legal costs of the judicial procedure and the cost of the B-Sample Analysis.

53. 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 authorized or organized 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 organization (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

54. According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

55. In accordance with Article 12 of the ECM Rules, the PR may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

**6. 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**



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**THE CHAIRMAN, Prof. Dr. Jens Adolphsen**