

DECISION of the FEI TRIBUNAL

Dated 23 May 2012

Positive Controlled Medication Case No.: 2012/CM03

Horse: LOBSTER

FEI Passport No: GER25784

Person Responsible: Abdullah Waleed Sharbatly

Event: CSI3*-W, Al Ain (UAE); 09 – 11 February 2012

Prohibited Substances: Phenylbutazone, Oxyphenbutazone

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, Chair
Mr. Pierre Ketterer, member
Ms. 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 19 April 2012 – FEI Headquarters Lausanne

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

For the PR: Mr. Abdullah Waleed Sharbatly, 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. Stanny Van Paesschen, Team Trainer
Dr. Philippe Benoit, Team Veterinarian

For the FEI: Ms. Lisa Lazarus, General Counsel

It was agreed at the request of Counsel for the PR to allow Mr. Khaled Abdulaziz Al Eid, Person Responsible in Case 2012/CM01 – VANHOEVE, and also a member of Saudi Equestrian, whose hearing had taken place the preceding day, to be present during the hearing together with Mr. Sami Al Duhami, team director for Saudi Equestrian and a witness for Mr. Al Eid.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2012.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5 April 2010, updates effective 1 January 2012, 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: Abdullah Waleed Sharbatly

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 – 2.5 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. LOBSTER (the “Horse”) participated at the CSI3*-W Al Ain (UAE) from 9 to 11 February 2012 (the “Event”), in the discipline of Jumping. The Horse was ridden by Mr. Abdullah Waleed Sharbatly, who is the Person Responsible in accordance with Article 118 of the GRs (the “PR”).

2. The Horse was selected for sampling on 10 February 2012.

3. Analysis of blood sample no. 5509045 taken from the Horse at the Event was performed at the FEI approved laboratory, HFL Sport Science, Newmarket Road, Cambridgeshire, UK (“HFL”), by Ms. Selina Hines, Analyst and reviewed by K. Lubbock, Team Leader. 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.

6. 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.

7. 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, in January 2006 the PR committed an EAD Rule violation 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

8. 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 24 February 2012, through the Saudi Arabian Equestrian National Federation ("KSA-NF"). Together with the Notification Letter, the FEI requested the suspension of the Horse in accordance with Article 161.2(v) of the GRs, in order to protect the welfare of the Horse. In support of the request, the FEI provided various documentation that the Horse had been hospitalised and treated extensively shortly prior to the Event, amongst them an ETUE1 Form for Ventolin and Atrovent, a Medication Form 3 for Excenel and an unsigned treatment report by Sharjah Equine Hospital of 30 January 2012.

4.3 The B-Sample Analysis

9. The PR was also informed in the Notification Letter of 24 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.

10. By letter dated 28 February 2012, the PR confirmed that he wished for the B-Sample analysis to be performed. He requested that the analysis be carried out at HFL, in the interest of expediting the matter. The PR designated Dr. Neville Dunnett of Independent Equine Nutrition to attend the B-Sample analysis as his representative.

11. The B-Sample analysis was performed on the blood Sample at HFL on 6 March 2012.

12. The B-Sample analysis of the blood was positive for the presence of Phenylbutazone and Oxyphenbutazone. This confirmed the analytical findings of the A-Sample.

13. The results of the B-Sample analysis were notified to the PR on 13 March 2012.

4.4 The Further Proceedings

14. By letter dated 27 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.

15. By letters dated 27 February 2012 and 28 February 2012, the PR requested information about the levels of the Controlled Medication Substances found in the Horse, and the concentrations used in the reference sample.

16. By letter of 28 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, confirming that he had not competed since 10 February 2012.

17. By letter of 1 March 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 HFL had however been 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 112ng/ml, and Oxyphenbutazone at approximately 45 to 95ng/ml. The FEI further explained that according to HFL, the reference sample used for the confirmation of Phenylbutazone and Oxyphenbutazone is a non-extracted reference standard, which is designed simply to provide a qualitative chromatographic and mass spectrometric reference comparison for the test sample. That as such, a non-extracted reference standard has no meaningful concentration that can be used for comparison with the test (confirmatory) sample.

18. On 2 March 2012, the PR addressed the FEI's request to suspend the Horse. The PR argued that the Horse had to be treated for Phlebitis in the run up to the Event at the Sharjah Equine Hospital. The PR further submitted the treatment record of the Sharjah Equine Hospital, signed by the treating veterinarian of Sharjah Equine Hospital, Dr. Meike De Rijck, and underlined that the two Medication Forms had been signed by Dr. De Rijck, who had declared the Horse to be "fit to compete". That furthermore, the Veterinary Delegate at the Event, Dr. Ali Al Tweissi, had also examined the Horse, and had declared it to be fit to compete. The PR therefore requested that the FEI withdraw the request for the suspension of the Horse.

19. By letter of 5 March 2012, the FEI highlighted that the factual investigation regarding the welfare issue was still to be completed, and

that therefore it was premature to withdraw the request for the suspension of the Horse.

20. On 13 March 2012, the FEI submitted a written statement by Dr. Al Tweissi of the same day. In his statement, Dr. Al Tweissi confirmed that prior to the Event, he had received the report of Sharjah Equine Hospital as well as the two Medication Control Forms, from the PR. Further that he had seen the Horse during the trot up, and that the Horse seemed sound to him on that occasion. Dr. Al Tweissi stressed that the trot up was not comparable to a proper horse inspection or an examination, since its aim is only to control the horse's passport, and determine whether it moves smoothly. Lastly, Dr. Al Tweissi confirmed that upon review of the full documentation provided by the PR, and having seen it at the trot up, he had declared the Horse fit to compete. Based on the statement of Dr. Al Tweissi, the FEI declared that it was not proactively pursuing the welfare claim, but highlighted that the decision regarding the Suspension of the Horse was to be ultimately taken by the Tribunal.

21. On 19 March 2012, the PR made a "Timely Admission" of the violation and requested that any period of Ineligibility to be imposed should be effective from the date of sample collection, i.e. 10 February 2012.

22. On 28 March 2012, the PR provided his response to the charge and his explanations. 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. That he had assisted the PR in carrying out investigation into possible causes of the positive test result. That he had contacted the Sharjah Equine Hospital directly and received express confirmation that the Horse was not administered Phenylbutazone or any derivative of it. That he also retraced the Horse's movements between the Hospital and the Event and could not determine any obvious time when the Horse could have come into contact with the Prohibited Substances. Mr. Abduljawad further testified that the team was in the process of testing the supplements, manufactured by the company Caylor and administered to the team horses, to ascertain if any such supplements were contaminated. Furthermore that he had requested the assistance of the FEI Integrity Unit to assist them in their ongoing investigations.

(b) Statement by Mr. Rogier Van Iersel, team manager at Saudi Equestrian. Mr. Van Iersel testified that he was shocked to hear of the PR's rule violation, stating that in his opinion, the PR was an honest competitor, and that he would never deliberately try to breach the Anti-Doping and Controlled Medication rules.

(c) Statement by Mr. Stanny Van Paaeschen, the team trainer at Saudi Equestrian. Mr. Van Paaeschen stated that he had spoken to Dr. Tweissi, on the Friday before the Competition, in the afternoon, to be certain of the Horse's fitness to compete. That Dr. Tweissi had confirmed that the Horse could compete and would be tested after the Grand Prix Competition. Furthermore that he had no doubts that if the PR had suspected there to be any Prohibited Substances in the Horse's system, the PR would have withdrawn the Horse from the Competition.

(d) 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. Dr. Benoit further asserted that no one at Saudi Equestrian had administered Phenylbutazone to the Horse, and that he would never advise anybody to administer Phenylbutazone to any Saudi Equestrian horse. That according to him, the occurrence of Phenylbutazone and Oxyphenbutazone in the Horse's system could only result from accidental ingestion by the Horse through contamination of feed or bedding at the Event stables, or from ingestion of trace amounts from the Horse's surroundings. Regarding the welfare claim, Dr. Benoit stated that he had been aware of the Horse's treatment at the Sharjah Equine Hospital prior to the Event and that insofar as he had been concerned at the withdrawal time for ventolin nebulisation, he had advised the PR to apply for an ETUE1 form.

(e) 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.

(f) Statement by Dr. Al Tweissi, which had been produced by the FEI on 13 March 2012.

(g) The PR also submitted an expert report from Dr. Mark Dunnett. Based on the assumption that the stables provided for the Horse at the Event had been contaminated, Dr. Dunnett proposed three theories by which the Horse could have ingested Phenylbutazone from its potentially contaminated stable. Dr. Dunnett concluded that contamination of the stable environment with residue of Phenylbutazone from legitimate treatment of other horses prior to the Event was a plausible explanation for the presence of the detected levels of Phenylbutazone and Oxyphenbutazone. 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 level of Phenylbutazone, as provided by HFL, as being very low, and that it was unlikely that the substance had any therapeutic or performance enhancing effect.

23. The PR admitted that he was not in a position to provide a definitive explanation as to how the Prohibited Substances had come into the Horse's system. That investigations had been undertaken into the question the source of the Prohibited Substances. That as a result of these investigations, it could be concluded that the Horse had not been prescribed the Prohibited Substances, either by the team veterinarian or the treating veterinarian at the Equine Hospital. The PR further argued that neither he nor his support team have access to the Prohibited Substances detected, or have administered the substances to the Horse. That the Horse had been tested at a competition in Sharjah from 26 to 28 January 2012, and that the results of that test were negative. The PR concluded that there were two possible explanations for the presence of the Prohibited Substances, one of them being ingestion due to exposure to a contaminated environment and/or the consumption of a contaminated product, the other one being sabotage. The PR stated that in light of the fact that he had no evidence of sabotage, the most likely explanation was contamination. Regarding the possibility of contamination, the PR explained that he had focused the investigations on the Al Ain Equestrian Club, where the Horse was stabled during the Event. The PR explained that he did not have any concerns at the time with regard to the Event stabling, arguing that he was always aware that contamination could be an issue in any stable environment, and that therefore, contamination could not be ruled out as a cause of a positive test result. That the Horse had been "very greedy and prone to root around in his surroundings", and that therefore it was entirely possible that the Horse could have ingested a trace amount of the Prohibited Substances while being stabled at the Event. That Dr. Dunnett had explained that contamination at the Stables could have possibly lead to the positive test result. The PR further stated that none of the tests performed on the supplements given to the Horse in the lead up to the Event have resulted in a positive finding for Phenylbutazone or Oxyphenbutazone. The PR further explained that the FEI Integrity Unit ("ECIU") had been, and still is assisting him in his investigations.

24. Regarding the question of Fault or Negligence for the rule violation, the PR contended that he had 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. That therefore, 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. That furthermore, due to the "exceptional circumstances" of his case, any sanctions imposed on him should be minimal. That – in order to determine any period of Ineligibility, the Tribunal should take into account the following factors (a) the

allegedly low levels of the Prohibited Substances found in the Horse's sample as referred to by Dr. Dunnett. 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, (b) the upcoming Olympic Games and the PR's need to obtain a certificate of capability by 17 June 2012, (c) the effect any period of Ineligibility would have on the Saudi team, (d) the PR's knowledge and adherence to the EADCMRs, and e) the PR's apology. 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 has 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. Concluding, the PR highlighted that he had elected a period of Voluntary Provisional Suspension on 28 February 2012, and had made a timely admission of the violation, two factors the PR requested to be taken into account when determining the commencement date of any period of Ineligibility.

25. Regarding the welfare issue raised by the FEI, the PR stated that the Horse had left Belgium on 20 December 2011 to compete in Doha, Qatar, and had then continued to Dubai on 5 January 2012. That the Horse had been coughing and had therefore been given natural herbs, and rested until an event on 19 January 2012 in Ghantoot, UAE. That it had again competed on 26 January 2012 in Sharjah, and finally at the Event in question. That the Horse had been selected for testing at the later three events, providing negative results. That after the Sharjah event, the Horse had been making "a noise while breathing", and had therefore been examined at the Sharjah Equine Hospital on 30 January 2012. That the examining veterinarian, Dr. Mieke De Rijck had diagnosed the Horse as suffering from phlebitis, an inflammation of the jugular veins, and also mild lameness. That treatments of Ventolin and Atrovent pumps had been prescribed, to be administered into the nose, and that the treatment had been finished 8 days before the Event. That the Horse had been re-examined on 6 February 2012, prescribed antibiotics for its respiratory condition, and certified fit to compete by the examining veterinarian. The PR confirmed that he kept his team veterinarian and managing director aware of all treatments.

26. On 11 April 2012, the FEI provided its response to the PR's submission.

27. Responding to the issue regarding the welfare of the Horse, the FEI accepted Dr. Tweissi's testimony, stating that it was not proactively

pursuing this matter. That however, the matter remained open for the FEI Tribunal to consider.

28. 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.

29. 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 entered 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 highlighted that the PR himself had acknowledged that he did not have any definite explanation for the presence of the Prohibited Substances, and that the "possible explanations" provided by the PR were purely speculative and theoretical possibilities. The FEI further stressed that there was no evidence demonstrating that the environment at the Event's stable was indeed contaminated, and that therefore, and applying the above principles, it had to be concluded that the PR had not established how the Prohibited Substances had entered the Horse's system.

30. With regards to the PR's Fault or Negligence for the rules violation, the FEI argued that in the absence of an explanation of the source of the Prohibited Substances in the Horse's sample, under the ECM Rules, the PR's fault or negligence is presumed to be the cause, and that this presumption must stand.

31. 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 in response to the allegation of the low levels of the Prohibited Substances 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 low levels are necessarily consistent with a contamination theory. Regarding the PR's arguments in respect of 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. That the PR's knowledge of the EADCMRs and his commitment to following them must be rejected as there was no meaningful basis on which such a contention could be assessed. That in the absence of an explanation as to how the Prohibited Substances entered into the Horse system, it was impossible to assess the PR's fault for the rule violation. That further, given the absence of any explanation provided by the PR as to how the Prohibited Substances had entered the Horse's system, there was no meaningful basis on which to assess the PR's apology, and that therefore it should be given little weight. 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 be taken into account.

32. 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 28 February 2012. The FEI however contested that the PR's admission was "timely" in the context of Article 10.8.2 of the ECM Rules, since the PR had only submitted the admission following the results of the B-Sample analysis. The FEI further requested that pursuant to Article 10.1 ECM Rules, the Tribunal should disqualify the PR's other results obtained with the Horse at the Event. That furthermore, it would be at the discretion of the Tribunal to also disqualify the results obtained by the PR at the Event with another horse, LARKHILL CRUISER.

33. On 13 April 2012, the PR filed its rebuttal submission. The PR explained that further to his investigation into possible contaminated supplements none of the Caylor supplements tested contained either of the Controlled Medication Substances. That the ECIU had confirmed that

the Al Ain Equestrian Club could not discount the use of Phenylbutazone, but that the ECIU, as of the date of the hearing had been unable to obtain any further cooperation from the UAE NF or the Al Ain Equestrian Club. The PR explained that for this reason, he could not take the enquiries any further, but maintained that it is entirely possible the Horse came into contact with a contaminated environment while stabled at the Event which caused the positive finding.

34. 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 FEI Tribunal to take into account. The PR submitted that in light of that CAS decision, imposing a period of Ineligibility of longer than two (2) months would be disproportionate and unfair to him.

35. Regarding the timely admission of the ECM Rule violation, the PR contended that one could not be expected to admit a Rule violation before the results of the B-Sample are confirmed. Lastly, that it was inappropriate to disqualify the results of any other horse the PR competed with at the Event since the PR had not been under a Provisional Suspension, and there was no evidence that the other horse competed with a Prohibited Substance in its system.

4.5 The Hearing

36. The Hearing took place on 19 April 2012. In their opening submissions, 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 having been committed under Article 2.1 of the ECM Rules.

37. With regard to the issue of the welfare of the Horse, both Parties agreed that the statement of Dr. Tweissi was accepted. The PR submitted that he was extremely concerned about the welfare of his Horse and had done all he could do to ensure the Horse was fit to compete. The FEI submitted that it was a matter of routine to suspend a Horse if there were even preliminary concerns about its welfare, but given the evidence now adduced, the FEI was no longer pursuing the welfare issue.

38. The FEI, addressing the question of the source of the Prohibited Substances, argued that case law precedent (WADA -v- Stanic & Swiss Olympic Association, CAS 2006/A/1130 and the FEI Tribunal decision in KARABIL KAIYA HAI, Case 2011/BS09 dated 21 March 2012) 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.

39. Referring to the pending case of VANHOEVE, 2012/CM01, 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 (who is also counsel to the PR in the VANHOEVE case) further submitted that the PR did not seek to rely on Article 10.4.1 of the ECM Rules to establish a basis to eliminate or reduce any Period of Ineligibility. Counsel argued instead that even if the PR failed to prove No Fault or No Negligence for the rule violation, it would be grossly disproportionate under the circumstances to impose a sanction that would jeopardise the Saudi team's and the PR's ability to compete at the Olympic Games.

40. 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 this highly professional structure. He explained that guidelines had been set and it had been made clear to the team riders that they would be excluded from the Saudi team should they breach any FEI Rules. That the 2012 London Olympics 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 by 17 June 2012. Mr. Abduljawad confirmed that the PR had received a previous Yellow card at an Event in Belgium but he did not know the reason why the Yellow Card had been issued.

The PR testified as per his witness statement. The PR confirmed that his Horses were regularly selected for testing, and that his Horses were once tested 10 times in a two and a half month period. That the report from the Sharjah Equine Hospital had been openly provided to Dr. Tweissi at the Event, and that Dr. Tweissi had informed him that his Horse would be tested. That therefore, if he had any doubts about the condition of his Horse or any medication the Horse had been prescribed, he would not have competed. The PR further acknowledged the previous Doping violation in 2006, stating that in 2006 he was an amateur but recently a strict veterinary system has been put in place and his grooms adhere to that system and any medication administered is strictly recorded. With regard to the treatments the Horse received at the Sharjah Hospital, the PR explained that when the treating veterinarians certified the Horse fit to compete at the Event, he had no reason to doubt this advice. The PR further testified that he received a Yellow Card at a previous competition, for "hypersensitivity" of the horse. That the horse he was competing on at that time had scarring on its

front leg which rubbed against his boots and the scar opened. That the steward in the collecting ring felt the horse was injured, but he did not understand the steward's concerns, relayed to him in French, and that this resulted in a misunderstanding which led to an argument. Questioned over his current Olympic qualifications, the PR confirmed that he was qualified on the Horse, but that it was necessary for him to obtain a certificate of eligibility on a more talented horse because the horse for which he has the qualification is not an Olympic level horse. He reiterated the importance of the 2012 London Olympics to him, his country, and his career.

41. 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. There was no material factual dispute between the Parties with respect to Dr. Dunnett's expert report.

42. Mr. Rogier Van Iersel testified next, explaining that he had over 22 years of officiating experience at jumping shows, that he had built a strong reputation over the years and would therefore never risk being associated with doping. He further testified being 100% confident that the PR would do nothing to jeopardise the Saudi Equestrian team.

43. Mr. Stanny Van Paesschen also testified as a witness on behalf of the PR, confirming that he had been present at the Event and spoke to the show veterinarian Dr. Tweissi. He further explained the importance of the 2012 Olympic Games in London.

44. The final witness to give evidence was Dr. Philippe Benoit. He testified about how shocked he was to hear of the Horse's positive test. Dr. Benoit further confirmed that all substances in the team yard are locked away and that only the team manager 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. That the detection time for Phenylbutazone varied between 9 and 12 days depending on whether it was administered orally or intravenously. Dr. Benoit further testified to the good nature of the PR and his interest in the welfare of his animals. He confirmed that he had not known the PR at the time of his previous ECM violation in 2006. With regards to the PR's Yellow Card, Dr. Benoit explained that he knew the scar referred to by the PR. That it was located on the nerve leading to the foot, which rubbed very easily especially when boots are used. Questioned over a record in the Horse's Medication Logbook recording the dispensing of 'Ketoprofen', Dr. Benoit

confirmed that the record showed the content of the Horse's emergency veterinary box, and that in case anything was used from it, there would be a clear note to this effect in the box. When questioned whether the presence of the Prohibited Substances could originate from the treatment at the Sharjah Equine Hospital, Dr. Benoit acknowledged that the Hospital had used two short acting steroids and a nebuliser in the Horse's treatment. That the Hospital had estimated the withdrawal time for those substances at 5-6 days, which was overly cautious in his view and, in any event, could not have been the cause of the positive Sample.

This concluded the evidence and closing submissions followed.

45. The FEI submitted in its closing statement that the PR had not shown how the Prohibited Substances had entered the Horse's system. The FEI accepted the credibility of all the testimony given but submitted that the PR had provided no clear and detailed 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 a sufficient causal connection to satisfy the legal burden. That insofar as an ECM 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 that he could not benefit from the "Fast Track" procedure. Citing the FEI case of CORNET OBOLENSKY, Case 2009/15, Final Tribunal Decision dated 15 June 2012, the FEI argued that a period of Ineligibility of four (4) months would be appropriate. That in the case at hand, four factors were taken into consideration when deciding the length of the period of Ineligibility (i) the grade of the Prohibited Substances, (ii) the clean record of the PR, (iii) the PR's reliance on a reputable team veterinarian, and (iv) the timing of the proceedings. The FEI stated that the efforts of the PR to submit the requisite ETEU1 Form and Medication Form 3 should be taken into account by the Tribunal.

46. In response, Counsel for the PR confirmed that the PR was not seeking mitigation of the period of Ineligibility under Article 10.4.1 or 10.4.2 of the ECM Rules. But that the Tribunal should consider the proportionality of any sanctions, such as "the way" in which the Prohibited Substances came to be ingested by the Horse, 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 one (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.

47. With regard to the timely admission by the PR, Counsel cited the recent CAS decision of Omran Ahmed Al Owais v FEI, CAS 2011/A/2558, and the FEI Tribunal decision of BURBERRY SPOT, Case 2011/BS11, Final Tribunal Decision dated 11 November 2011, in order to argue that in both cases, it was accepted that due to the Timely Admission of a violation, the period of Ineligibility commenced as of the date of Sample collection.

5. The Decision

5.1 Jurisdiction

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

5.2 The Person Responsible

49. 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.

5.3 The Decision

50. 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 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 a Controlled Medication Substances under the FEI Equine Prohibited Substances List.

51. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with ECM Rules Article 3. This is undisputed between the Parties.

52. 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.

53. 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".

54. The Tribunal finds that the PR 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 the PR and Dr. Benoit show no deliberate administration of the Phenylbutazone and the Oxyphenbutazone. The Tribunal is not persuaded that the PR has established ingestion by means of contamination. First of all, the PR did not adduce any evidence regarding his allegation that there was any contamination at the stable of the Event. This therefore remains pure speculation without any foundation. Furthermore, the report by Dr. Dunnett provided in support of the contamination allegation, is first of all based on the speculation that there had been contamination at the Event Stables. Secondly, the report only establishes possible means of ingestion from a potentially contaminated stable environment, but does not offer a clear explanation as to the presence of the Prohibited Substances. Furthermore, the investigations carried out by the PR into the possibility of contamination in feed supplements did lead to a negative test result, and also the investigations by the ECIU did not lead to any explanation to date of the source of the Phenylbutazone and Oxyphenbutazone. Evaluating the explanations and evidence submitted, by reference to the established principles required to satisfy this legal burden, the Tribunal rejects the PR's theories on ingestion in a contaminated environment. It is therefore the opinion of the Tribunal that the PR has failed to prove the concrete 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.

55. 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 in the EAD Rules (EAD Rules Article 10.5) 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. Within this context, the Tribunal takes into consideration as mitigating factors the fact that a professional team structure was in place with procedures for avoiding anti-doing rule violations, that the PR's team employed a professional veterinary team whom the Athletes had access to

both during and outside of business hours., the prompt admission by the PR of the rule violation and the Voluntary Suspension accepted by him, the submission of the ETEU1 Form and the Medication Form 3 prior to the Event, the cooperation in investigations and the apology of the PR. On the other hand, the Tribunal also takes into consideration that the 2006 violation was a Doping offence. The Tribunal declines to take into account the 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 the Puerta decision is not comparable with this case. The panel in the Puerta case has used the quantity to consider 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 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 HFL. Lastly, the FEI has established Screening Limits for all Prohibited Substance, 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.

56. 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, relied upon by the FEI, does not directly apply in this context, the reasoning behind it is instructive to the case at hand. 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 event 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, a consideration of the upcoming Games for determining the length of suspension would not provide a level playing field in a sports calendar that offers major events almost every year. Further, considering the effect on the Saudi team, would lead to a substantial unequal and unjustified treatment of PRs that are part of a team structure, and this would destabilise the level playing field. The Tribunal further took into account that there are other riders from the Saudi team that can be sent to the Olympic Games, and that the decision of the Saudi Equestrian team to rely on a limited number of six (6) riders only is on its own risk.

57. By determining the duration of the period of Ineligibility, the Tribunal is not bound by the motion of the FEI. The Tribunal is of the opinion that

the proposed period of Ineligibility of four (4) months is not sufficient 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 away from being an exceptional case that would force the Tribunal to further take into account the principle of proportionality.

58. With regards to the welfare of the Horse, and in accordance with Article 161.2 of the GRs, the Tribunal holds that this argument is dismissed, since suspending the Horse several weeks after the Horse had competed and sampling took place makes little sense.

59. The Tribunal finds that in accordance with Article 10.8.4 of the ECM Rules, the PR may receive a credit for the period of Provisional Suspension voluntarily elected on 28 February 2012. Furthermore, and with regard to the PR's admission, the Tribunal is of the opinion that it is acceptable for the PR to wait for the B-Sample analysis results before he admits a violation pursuant to Article 10.8.2 of the ECM Rules. For this reason the Tribunal holds that the Ineligibility period commenced on 10 February 2012, the date of the Sample collection.

5.4 Disqualification

60. 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, but does not disqualify the results obtained by the PR with other horses.

5.5 Sanctions

61. 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 immediately. The Period of Ineligibility is deemed to have started on the date of Sample collection on 10 February 2012 and will expire on **9 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.

62. 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.

63. 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.

64. 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



THE CHAIRMAN, Prof. Dr. Jens Adolphsen