



DECISION of the FEI TRIBUNAL

dated 20 February 2014

Positive Controlled Medication Case No.: 2013/FT02

Horse: HONKY TONK WHIZ

FEI Passport No: 103GE95

Person Responsible/NF/ID: Colette Voigt/RSA/10077570

Event: CRI1*-B – Parys (RSA)/2012_CI_1605_R_S_05

Date: 18 November 2012

Controlled Medication Substance: Scopolamine

I. COMPOSITION OF PANEL

Ms. Randi Haukebø (one member panel)

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

3. Oral hearing: none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23rd edition, effective 15 November 2011 ("Statutes"), Arts. 1.4, 36, 37 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, effective 15 April 2007, revision 1 February 2008 and Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012, Part III ("**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 Substances List").

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Colette Voigt

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* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule violation* under Article 2.1".

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 HONKY TONK WHIZ (the "Horse") participated at the CRI1*- B in Parys, South Africa, on 18 November 2012 (the "Event"), in the discipline of Reining. The Horse was ridden by Ms. Colette Voigt, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 18 November 2012.
- 1.3 Analysis of urine and blood sample no. 591572 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory, Sport Science ("HFL") in the United Kingdom by Ms. Selina Hines, Team Leader, under the supervision of Mr. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Scopolamine (Certificate of Analysis 79455 dated 11 December 2012).
- 1.4 The Prohibited Substance detected is Scopolamine. Scopolamine is a muscarinic receptor antagonist used to treat gastro-intestinal spasm. Scopolamine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Scopolamine to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") had been provided by the PR for the use of the substance on the Horse. Therefore, the positive finding for Scopolamine in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Proceedings

- 2.1 The presence of the Prohibited Substance following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR, through the South African Equestrian Federation ("RSA-NF"), by the FEI Legal Department on 22 January 2013.
- 2.2 The proceedings were initiated under the Administrative Procedure (otherwise referred to as the "Fast Track" procedure) insofar as the respective prerequisites under Article 8.3 of the ECM Rules were fulfilled. The PR was afforded the opportunity to accept the following administrative sanctions: (i) Disqualification from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of CHF 1,500, and (iii) the payment of CHF 1,000 in costs. The PR was further informed that in case she did not accept the administrative sanctions offered, the case would be submitted to the FEI Tribunal procedure, and, provided the presence of the substance was established, the Tribunal would impose penalties which would be more or less severe than the administrative sanctions offered.

- 2.3 On 11 February 2013, and after having been made fully aware of the potential risks and consequences of declining the administrative sanctions by the FEI, the PR informed the FEI that she did not accept the administrative sanctions offered to her in the Notification Letter of 22 January 2013.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 22 January 2013, the PR was also informed that she 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.
- 3.2 The PR did not request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

4. Written submission by the PR

- 4.1 On 21 February 2013, the PR submitted her explanations. Together with her explanations, the PR also submitted several scientific papers concerning studies in which Datura ingestion or contamination of hay with (dried) Datura had led to positive Scopolamine findings in horses.
- 4.2 In essence the PR argued:
- a) That, given that she had not administered any Scopolamine to the Horse, the positive findings had to result from contaminated feed. That the Horse might have inadvertently ingested Datura, a weed containing Scopolamine mainly in its seeds and flowers. That insufficient good quality grass had been available in South Africa from mid to late 2012, and that the available grass had often been contaminated with Datura, which was also known as Thornapple. That however in light of the fact that the grass fed to the Horse had been part of the November 2012 cut, no sample of that grass was available anymore for testing for Prohibited Substances.
 - b) That the alleged ingestion by the Horse of Scopolamine through contaminated feed was not deliberate and could not have been reasonably avoided.

5. Written submission by the FEI

- 5.1 On 28 February 2013, the FEI provided its Response to the written submissions by the PR.

5.2 In essence the FEI argued:

- a) That sufficient proof of the presence of a Controlled Medication Substance in the Horse's A-Sample had been provided, and that - as the PR had waived her right to the B-Sample analysis - a violation of Article 2.1 of the ECM Rules had been established.
- b) That a period of Ineligibility of up to two (2) years according to Article 10.2 of the ECM Rules had to be imposed, unless the conditions for eliminating, reducing or increasing that period as set out in Articles 10.4 and 10.5 of the ECM Rules were met.
- c) That however no elimination or reduction under Article 10.4 of the ECM Rules would apply, since the PR had not fulfilled the prerequisites for the application of that Article, as she had not established how the Scopolamine had entered the Horse's system.
- d) That with regards to the alleged contamination, the PR had not adduced any evidence that the feed had indeed been contaminated, and that she had further acknowledged herself that she could not adduce any evidence in this regard, as no sample of the potentially contaminated feed was available anymore. Furthermore, that she had not established that any contaminated food had been administered to the Horse. That however, and as established in previous FEI Tribunal decisions, it was necessary to establish that the feed had indeed been contaminated, as a first step towards proving that the positive test result had been caused by contamination. That therefore, and in the absence of any proof for feed contamination, the scientific papers produced by the PR had no value for the case at hand.
- e) That however even if the PR had established how the Scopolamine had entered the Horse's system, she could not sustain her burden of establishing No (or No Significant) Fault or Negligence for the Rule violation. That she should have made herself familiar with at least the most common and known risks of feed contamination in her country, and that she should have further taken preventive measures to avoid any such contamination, even more so as according to one of the papers produced by the PR herself, already published in 2005, the danger of Datura seed had long been recognised in South Africa. That the PR therefore seemed to have failed to ensure that no Controlled Medication Substance came to be present in the Horse's system during the Event.

6. Rebuttal submission by the PR

6.1 On 29 March 2013, the PR provided her Rebuttal submission. In her Rebuttal submission, the PR explained that she had not accepted the administrative sanctions proposed to her because this would have implied admitting guilt, and that she was not guilty. That further, the proposed fine was extremely high and equivalent to three months of salary in South Africa.

6.2 In summary, the PR further submitted:

- a) That the Horse had been under FEI quarantine for the duration of the Event, and that security measures included night checks.
- b) That she was fully aware of FEI Equine Anti-Doping Rules and Regulations, and that she acknowledged the FEI "strict liability" principle. That however, in the case at hand, there had been no possibility of knowing that the Horse had inadvertently ingested Scopolamine. That further it was impossible to prove a link between the contaminated feed and the positive test result in a Third World Country like South Africa. That insofar as South African law did not require teff or hay to be tested for contamination, no data was available in this respect.
- c) Finally, that contamination had to be the reason for the positive findings, as the only product containing Scopolamine was the product "Buscopan", which was used to treat horses suffering from a colic. That, in South Africa, Buscopan was however only available on prescription to registered veterinarians, and that she had therefore no access to this medication. That Buscopan would have to be administered intravenously, and that she had no experience nor qualification in this regard.
- d) That she had had no intention to enhance the Horse's performance, even more so as there had been no prize money at the Event, and that the Horse had only been her second horse at the Event, which she had having compete for the sake of gaining experience only. That in addition, she had been advised of the sampling by FEI Officials on the day prior to the testing, and that Scopolamine could only be detected in the urine of a horse for twenty-four (24) hours. Lastly, that in case the Horse would have needed Scopolamine treatment, i.e. in case of a colic, she would have rather pulled the Horse out of the Event, and had done so in the past.

7. The further Proceedings

- 7.1 On 18 September 2013, the Parties agreed for the FEI to perform further investigations with regards to the A-Sample. In the following, the FEI requested HFL to re-examine the screening data for the A-Sample, and to specifically look for the Datura markers apoatropine, norotrapine and meteloidine, as well as atropine, and to compare the data with that obtained for the presence of Scopolamine.
- 7.2 On 12 December 2013, the FEI notified the PR of the outcome of the investigations by HFL, reporting that HFL had concluded that there was no definitive proof that the Scopolamine finding resulted from contaminated feed.

8. Jurisdiction

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

9. The Person Responsible

- 9.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she had competed with the Horse at the Event.

10. The Decision

- 10.1 As set forth in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample, provided the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Scopolamine 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, and did not request for the B-Sample analysis to be performed. Scopolamine is classified as Controlled Medication Substance under the Equine Prohibited Substances List.
- 10.2 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.
- 10.3 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, and the PR did not accept the administrative sanctions offered to him or her under the Fast Track procedure, the PR has the burden of proving that she bears "No Fault or Negligence" for the rule violation 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.

10.4 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 Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.

10.5 The Tribunal takes note of the PR's explanation that contaminated feed had to be the reason for the positive finding. The Tribunal further takes note of the scientific papers provided by the PR concerning studies in which Datura ingestion or contamination of hay with (dried) Datura had led to positive Scopolamine findings in horses. However, based on these scientific papers and the explanation by the PR only it is not possible for the Tribunal to determine whether the positive Scopolamine result in the case at hand had indeed been caused by contaminated feed. Further, and in line with its previous decisions (FEI Case 2009/25 – CJS GAI FOREST, Final Tribunal Decision dated 14 September 2010, FEI Case 2011/BS09 KARABIL KAIYA HAI, Final Tribunal Decision dated 21 March 2012 and FEI Case 2011/BS14 – BINGO, Final Tribunal Decision dated 14 August 2012) the Tribunal underlines that in cases of positive findings allegedly caused by contaminated feed, it is not sufficient to prove contamination of the feed only. In addition, a link between the contaminated feed and the positive test result needs to be established. In the case at hand the Tribunal however finds that the PR has not even adduced any evidence in regard to the first step, i.e. that the feed had indeed been contaminated. The Tribunal therefore finds that the PR has not established, by a balance of probability – as required under Article 3.1 of the ECM Rules - how the Scopolamine had entered the Horse's system.

10.6 However, even if the Tribunal would accept that the PR has established how the Scopolamine had entered the Horse's system, the Tribunal nevertheless holds that the PR had been negligent for several reasons. The Tribunal holds that in accordance with Article 2.1.1 of the ECM Rules, it is the PR's personal duty to ensure that no Prohibited Substance is present in the Horse's body during an Event. In this respect the Tribunal takes note of the PR's claim that she had no possibility of knowing that the Horse had inadvertently ingested Scopolamine. The Tribunal however takes note of the scientific paper produced by the PR, published in 2005, according to which the danger of contaminated feed with Datura had long been recognised in South Africa. The Tribunal further finds that the PR did not adduce any evidence as to whether or

not she had taken any preventive measures in order to address the well-known risk of her Horse ingesting contaminated feed.

10.7 Accordingly, the Tribunal finds that the PR has acted negligently in performing her duties as competitor. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

10.8 In deciding the sanctions the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility under the applicable 2012 version of the ECM Rules. The Tribunal further considered the revised wording of Article 10.2 of the ECM Rules, which became effective as of 1 January 2013. Pursuant to Article 10.2 of the ECM Rules effective in 2013, the period of Ineligibility imposed shall be commensurate with the seriousness of the offence, taking into account the underlying principles objectives and rationale of the ECM Rules and the FEI Medication Code, as well as the principles of fair play. Furthermore, Article 10.2 of the ECM Rules effective in 2013 foresees a period of Ineligibility of six (6) months, subject to any elimination or reduction as provided in Article 10.4 of the ECM Rules, or increase as provided in Article 10.5 of the ECM Rules. The Tribunal holds that, whereas the 2013 version of the ECM Rules does not apply to the case at hand, the generally applicable period of Ineligibility of six (6) months foreseen in the ECM Rules effective in 2013 is reasonable, and is taken as guidance when deciding the sanctions.

10.9 The Tribunal takes further note of the PR's explanation that the proposed fine was extremely high and equivalent to three months of salary in South Africa. The Tribunal, in deciding the sanctions imposed on the PR is considering the specific circumstances of the case at hand, including but not limited to the level of the Event, the fact that only one Prohibited Substance was detected in the Horse's sample, and the degree of negligence by the PR.

11. Disqualification

11.1 For the reasons set forth above, the 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.

12. Sanctions

12.1 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 **six (6) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **19 August 2014**.
- 2) The PR is fined **five hundred Swiss Francs (CHF 500,-)**.
- 3) The PR shall contribute **five hundred Swiss Francs (CHF 500,-)** towards the legal costs of the judicial procedure.

12.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.9.1 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.

12.3 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.

12.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL



One member panel, Ms. Randi Haukebo