



## **DECISION of the FEI TRIBUNAL**

**dated 10 December 2015**

**Positive Controlled Medication Case No.:** 2014/CM08

**Horse:** CEDAR RIDGE DESERT DUELLER

**FEI Passport No:** UAE40514

**Person Responsible/NF/ID:** Abdulwahab Mubarak Alharbi/KSA/10074406

**Event:** CEI1\* 100 – Riyadh (KSA)/2014\_CI\_1325\_E\_S\_01\_01

**Date:** 6 December 2014

**Controlled Medication Substances:** Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide, Dexamethasone

### **I. COMPOSITION OF PANEL**

Ms. Randi Haukebø

### **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 23<sup>rd</sup> edition, effective 29 April 2014 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1

January 2014, Arts. 118, 143.1, 161, 168 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 2014.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2014.

Veterinary Regulations ("VRs"), 13<sup>th</sup> edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Abdulwahab Mubarak Alharbi

**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* body during an Event without a valid *Veterinary Form*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

#### **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 Tribunal 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 CEDAR RIDGE DESERT DUELLER (the "Horse") participated at the CEI1\* 100 in Riyadh, Saudi Arabia, on 6 December 2014 (the "Event"), in the discipline of Endurance. The Horse was ridden by Mr. Abdulwahab Mubarak Alharbi, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
- 1.2 The Horse was selected for sampling on 6 December 2014.
- 1.3 Analysis of blood sample no. 5533875 taken from the Horse at the Event was performed at the FEI approved laboratory, the Racing Laboratory, Hong Kong Jockey Club, Hong Kong, China ("HJC") by Nola Hua Yu, Chemist, under the supervision of Gary Ngai Wa Leung, Racing Chemist. Analysis of the plasma sample revealed the presence of Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone.
- 1.4 The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone. Phenylbutazone and Oxyphenbutazone are non-steroidal anti-inflammatory drugs (NSAID) used as analgesic and anti-inflammatory medication. Oxyphenbutazone is a metabolite of Phenylbutazone. Triamcinolone Acetonide and Dexamethasone are corticosteroids with anti-inflammatory effect. All four substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone to the Horse, and no Veterinary Form had been provided by the PR for the use of the substances on the Horse. Therefore, the positive finding for Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone 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 Substances following the laboratory analysis, the possible Rule violation and the consequences implicated, were officially notified to the PR and the owner of the Horse, through the Saudi Arabian Equestrian Federation ("KSA-NF"), by the FEI Legal Department on 12 January 2015. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 2.2 In the Notification Letter the PR was also informed that due to the fact that he was under eighteen (18) years at the time when the entry was submitted, he had to inform the FEI of the representative nominated for him before the Event, in accordance with GRs Article 118.4.
- 2.3 On 19 January 2015, the KSA-NF explained that Mr. Mohammed Nasser Amer was the owner of the Horse, and that he was also the person

representative for the PR in accordance with the GRs.

### **3. The B-Sample Analysis**

- 3.1 Together with the Notification Letter of 12 January 2015, the PR and the owner of the Horse were also informed that they were 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 Neither the PR, nor the owner of the Horse, did request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

### **4. Written submissions by the PR**

- 4.1 Between 19 January and 5 February 2015, the PR submitted his explanations for the positive finding. Together with his explanations the PR submitted two statements by Mr. Ibrahim Abdullah Mohammed, driver of the horse truck. Mr. Mohammed explained that he had transported the Horse to the Event. That during the transport the Horse had injured its right foot while been exposed to beating, while inside the car. That several hours after the injury he had found swelling in the area surrounding the beating area, and that the Horse had been in pain and not able to press on the foot. That therefore, after failing to contact the owner of the Horse, and fearing the Horse's safety, further injury of the Horse and other horses inside the truck, he had administered some medicines to the Horse which he had previously used in similar situations. More specifically, he explained that in the night of 3 December 2014, i.e. three days prior to the Event, he had injected twenty cm of DexaPhenylarthide into the Horse's vein and one cm of Kenacort into the Horse's muscle. Further, that he had not known that these products contained Prohibited Substances, and could potentially enhance the Horse's performance during the Event. Neither had he informed anyone of the administration of these medicines. Finally, that his intention at the time was merely the Horse's and the other horses' safety. Mr. Mohammed further provided pictures of the products administrated. The box of KENACORT outlined that it contained Triamcinolone Acetonide aqueous suspension.
- 4.2 In essence the PR explained that:
  - a) as rider of the Horse, he accepted responsibility for the Prohibited Substances found in the Horse's sample taken at the Event. That the Prohibited Substances had entered the Horse's system via the administration of some medicines – as explained by Mr. Mohammed – and that the Horse had required Mr. Mohammed's intervention following an injury during transport to the Event. That however insofar as Mr. Mohammed had only informed him of the administration of the products following the Event, he had not known that the Horse had

carried Prohibited Substances in its system during the Event.

- b) he had learned from this incident and assured that no such incident will happen to him in the future.
- c) The PR further requested that the Tribunal took into consideration his boyhood, his lack of experience, the fact that he had no knowledge about what had happened with the Horse during the transport, his extreme love for the sport, and the financial and moral difficulties he was facing in order to continue in this sport.

## **5. FEI Response**

5.1 On 13 August 2015, the FEI provided its Response to the PR's submissions. In essence, the FEI argued that:

- a) as Controlled Medication Substances had been present in the Horse's A-Sample taken at the Event for which no valid Veterinary Form had been submitted, and since the PR had waived his right to the B-Sample analysis, a violation of Article 2.1 of the ECM Rules had been established.
- b) the FEI Veterinary Department had reviewed the explanations provided by the driver and had concluded that the driver had used the standard doses for the two medications used by him, and that they should be detectable three days after administration. The FEI therefore argued that the PR had established how the Controlled Medication Substances had entered the Horse's system, and that therefore the first prerequisite for an elimination of reduction of the period of Ineligibility under Article 10.4 of the ECM Rules had been fulfilled.
- c) however, the FEI submitted that the PR was indeed at fault with regards to the positive finding. That the PR seemed to have failed to comply with his duty as Person Responsible to ensure that no Controlled Medication Substance was present in the Horse's body during the Event without a valid Veterinary Form insofar as apparently he had not done anything in order to ensure the Horse was competing without Prohibited Substances in its body. Furthermore, the FEI submitted that if the driver had been trained properly, he would have known first that he was using Prohibited Substances, and second that the Horse would have only been entitled to compete with a valid Veterinary Form. That had he been duly trained, the driver would have informed the PR accordingly, who would have been in a position to launch the required process for requesting a Veterinary Form. That it was furthermore questionable as to why the PR had not inquired with the driver about the journey, and any potential incidences, a question which would surely have reminded the driver of the incident and made him report the incident. Finally that it was alarming to the FEI that the PR – following what seemed to have been a substantial wound for the animal – had not become aware of the problem, and

started inquiries regarding the Horse's health and welfare. That this was even more alarming insofar as the Horse was taken by the PR on a 100-km-ride only three days after the injury and treatment. In summary, the FEI argued that the degree of Fault or Negligence of the PR for the rule violation was considerable.

- d) the Tribunal should impose a period of Ineligibility commensurate with the seriousness of the offence, taking into account the underlying objectives and rationale of the ECM Rules and FEI Medication Code, as well as principles of fair play. The FEI suggested that given the circumstances of the case at hand, a period of Ineligibility of at least six (6) months should be imposed on the PR.

## **6. Further Proceedings**

- 6.1 On 21 October 2015, the PR stated that he had nothing more to add in the case at hand, and requested for the Case File to be submitted to the Tribunal for consideration and adjudication.
- 6.2 On 10 November 2015, the FEI requested the lifting of the Provisional Suspension. The FEI explained that the PR had been provisionally suspended since 12 January 2015, and that so far he had not requested the lifting of the Provisional Suspension. That given these circumstances, and further given that the ECM Rules foresaw an average period of suspension of six (6) months in similar cases, the FEI requested the lifting of the Provisional Suspension, pending the issuance of the Final Tribunal Decision. The FEI further highlighted that by no means its request had to be understood as a final statement by the FEI regarding the sanctions to be imposed on the rider in the Final Tribunal Decision.
- 6.3 On 11 November 2015, the Tribunal decided to lift the Provisional Suspension with immediate effect, i.e. as of 12 November 2015. The Tribunal accepted that there might be a possibility that the Provisional Suspension, if maintained, could potentially result in a longer duration than the Final Suspension imposed by the Tribunal.
- 6.4 On 19 November 2015, upon question by the Tribunal, the PR further explained that upon request by the owner of the Horse he had agreed to ride the Horse at the Event, and that this had been the first time he had ridden the Horse in an FEI competition. That he had however ridden other horses for the owner of the Horse beforehand. Further, that he had not known the driver of the horse truck and that it had been the owner of the Horse who was (and was supposed to) taking decisions with regards to the Horse while being transported to the Event.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

- 8.1 Despite the fact that the PR was under eighteen (18) years when his entry was submitted he is the Person Responsible for the Horse, in accordance with Articles 118.3 and 118.4 of the GRs, as he had competed with the Horse at the Event.

## **9. The Decision**

- 9.1 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 where 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 HJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone 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, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of the four substances during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 The FEI has thus established an Adverse Analytical Finding for Phenylbutazone, Oxyphenbutazone, Triamcinolone Acetonide and Dexamethasone and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 9.3 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, the PR has the burden of proving that he 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.
- 9.4 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.
- 9.5 To start with the Tribunal takes note of the PR's explanations on how the four Prohibited Substances had entered the Horse's system, namely by administering the products DexaPhenylarthrite and Kenacort three days prior to the Event. The Tribunal further takes note of the FEI Veterinary Department's confirmation that the doses injected to the Horse should be detectable three days after administration, i.e. on the day of sample collection. The Tribunal is therefore satisfied that the PR has established - on a balance of probability, as required under Article

3.1 of the ECM Rules - how the Prohibited Substances had entered the Horse's system.

- 9.6 In a second step the Tribunal needs to examine the question of "No Fault or Negligence" or "No Significant Fault or Negligence" for the rule violation. In accordance with Article 2.1.1 of the ECM Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. The Tribunal finds that the PR has acted at fault in performing his duties as competitor for several reasons. To start with, the PR has apparently not made any inquiries whether the Horse was free of Prohibited Substances, nor put any measures in place to assure that he is informed of all medications administered to the Horse.
- 9.7 Furthermore, the Tribunal holds that – in line with its previous decisions - Persons Responsible are responsible for their Support Personnel and the medical treatment given by them to their horses. In the case at hand the Tribunal finds that – under the ECM Rules - the PR has to assume responsibility for the actions taken by the driver.
- 9.8 Finally, the Tribunal finds that the level of fault of the PR had been considerable, since he had not only competed with a horse with Prohibited Substances in its system, but had also potentially risked the Horse's health and welfare, when riding it on a 100-km-ride only three days after the injury.
- 9.9 Accordingly, the Tribunal finds that the PR has acted at fault in performing his duties as competitor. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 9.10 In accordance with Article 10.2 of the ECM Rules, the period of Ineligibility shall be commensurate with the seriousness of the offence taking into account the underlying objectives and rationale of the ECM Rules and the FEI Medication Code, as well as principles of fair play. Therefore the period of Ineligibility imposed on the PR shall be six (6) months. In this respect the Tribunal takes note that the PR – who had at no stage requested the lifting of the Provisional Suspension - has been provisionally suspended for ten (10) months. The Tribunal, in deciding the sanctions imposed on the PR, is considering the circumstances of the case at hand, including the PR's age at the time of the Event. The Tribunal therefore decides to impose a period of Ineligibility of six months on the PR and no fine.

## **10. Disqualification**

- 10.1 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.

## **11. Sanctions**

- 11.1 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** for the present rule violation. The period of Provisional Suspension, effective from 12 January 2015, the date of imposition of the Provisional Suspension, to 11 November 2015, the date of the lifting of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision.
  - 2) The PR shall contribute **five hundred Swiss Francs (CHF 500,-)** towards the legal costs of the judicial procedure.
- 11.2 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.
- 11.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.4 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**



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**One member panel, Ms. Randi Haukebø**