

**DECISION of the FEI TRIBUNAL
dated 1 April 2020**

Banned Substance Case: 2019/BS01

Horse/Passport: SODA/104PY45/UAE

Person Responsible/ID/NF: Ayed Sauod ALOSAIMI/10048137/KSA

Trainer/ID/NF: Faisal Mohammed KERDI/10147650/UAE

Event/ID: CEI1* 80 – Al Qaseem (KSA)/2018_CI_0484_E_S_01

Date of Event: 01 December 2018

Prohibited Substance(s): Boldione, Boldenone

I. COMPOSITION OF PANEL

Ms. Diane Pitts, one member panel

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Ayed Sauod ALOSAIMI.

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

EAD Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Banned Substance is present in the Horse's body. Persons Responsible are responsible for any Banned Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1."

EAD Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

1. Factual Background

- 1.1 SODA (the "**Horse**") participated at the CEI1* 80 in Al Qaseem, in the Kingdom of Saudi Arabia (KSA), on 1 December 2018 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Ayed Sauod ALOSAIMI, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event on 1 December 2018. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, The Hong Kong Jockey Club, in Hong Kong (the "**Laboratory**") analysed the Horse's blood sample number 5578361 (the "**A-sample**") and reported an adverse analytical finding of Boldione and Boldenone.
- 1.4 Boldione and Boldenone are anabolic steroids with anabolic effects, namely they increase muscle mass and modify behaviour. Boldione is an industrial precursor for various steroid hormones. These substances are listed as Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding for these substances in the A-sample gives rise to an EAD Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 15 January 2019, the FEI Legal Department officially notified the PR, through the National Federation of the KSA ("**KSA-NF**"), of the presence of the Prohibited Substances, the rule violation and the potential consequences (the "**Notification Letter**"). 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 Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 15 January

2019, until 14 March 2019. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 The PR and the Owner of the Horse were informed that they were entitled to request an analysis of the B-sample in the Notification Letter. They did not request for the confirmatory analysis to be conducted. Neither did they challenge the analysis results of the A-sample.

4. Written submission by and on behalf of the PR

- 4.1 On 29 May 2019, the PR submitted as follows:

"(...) I have been suspended from participating in endurance races for an indefinite period because of discovering a sample of the hormone boldenone. Knowing that I am not causing this.

As your Excellency knows that the knight is not the supervisor of horses, but he is in the race. The supervision on horses is the responsibility of their trainer. I have no knowledge of what was given by the trainer and this is what is common in all fields of the world. (...)"

5. Written Response by the FEI

- 5.1 On 12 March 2020, the FEI provided its Response in this case.
- 5.2 The FEI submitted that:
- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
 - b) The elements of an Article 2.1 violation are straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1"*. Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event confirmed the presence of Boldione and Boldenone and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of these Prohibited Substances in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.

- c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EADM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.
- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Boldione and Boldenone have entered the Horse's system. In this case, the PR has failed to establish the source of the Banned Substances in the Horse's sample. It was surprising that neither the PR nor the Trainer have provided any information nor explanations in relation to the source of the Boldione and Boldenone. The threshold requirement for proving how the substances entered the Horse's system has, therefore, not been fulfilled.
- e) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse.
- f) Since the PR has not established how the Prohibited Substances entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the PR.
- g) The FEI respectfully requested that the Tribunal issue a decision:
- (i) *upholding the charge that the PR violated Article 2.1 of the EAD Rules;*
 - (ii) *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;*
 - (iii) *imposing a period of Ineligibility of two (2) years on the PR, commencing from 15 January 2019 (the date upon which the*

- Provisional Suspension was imposed);*
- (iv) fining the PR in the amount of 7 500 CHF; and*
 - (v) ordering the PR to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.*

6. Further proceedings

- 6.1 On 12 March 2020, the FEI submitted the case file to the Tribunal for adjudication of the present case.
- 6.2 On 16 March 2020, the FEI Tribunal chair nominated a one member panel for the case at hand, and granted the PR with the opportunity to respond to the FEI Response. Furthermore, the Tribunal granted the Parties with the opportunity to request a final hearing. The PR however did not provide any further submission, and neither party requested for a hearing to be held.

7. Jurisdiction

- 7.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs and Article 18 of the IRs.

8. The Person Responsible

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the Horse's rider at the Event. The Tribunal wishes to clarify that Support Personnel, such as the Trainer, might be regarded as additional Person Responsible, but the PR remains the main Person Responsible. The case at hand deals only with the apparent EAD Rule violation of the PR.

9. The Decision

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Boldione and Boldenone in the blood sample taken from the Horse at the Event. The PR did not challenge the accuracy of the test results and the positive finding. Boldione and Boldenone are Banned Substances under the FEI List and the presence of those substances in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.

- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 9.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 9.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Further, the PR does not claim the application of Article 10.6 in this case.
- 9.6 In this case the Tribunal notes that the PR submits that he was only the rider of the Horse, and not responsible for the Horse. The Trainer was responsible for the Horse, and that he had no knowledge of what the Horse had been administered by the Trainer.
- 9.7 In accordance with Articles 2.1.1 and 2.2.1 of the EAD Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body at any time. Under the EAD Rules the PR is held strictly liable for the condition of the horse. CAS (CAS 2015/A/4190 - Mohammed Shafi Al Rumaithi v. FEI) has confirmed the FEI's policy in making the rider the Person Responsible. The Tribunal agrees with CAS and the FEI's policy. The Tribunal therefore also holds that "*making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play.*" Furthermore, the Tribunal also finds that "*It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse*".

- 9.8 Furthermore, both - CAS, as well as the FEI Tribunal¹ - have accepted this reasoning in the past and upheld the lawfulness of this approach, and thus rejected riders' arguments that they should not be held responsible for the condition of the horse since he had not control over the horse's care and preparation for competition. The Tribunal finds that this is necessary in order to achieve the imperatives underlying the EAD Rules.
- 9.9 Therefore, the PR – in order to potentially claim any reduction of the two (2) years period of Ineligibility – had to establish the source of the Banned Substances. However, he did not submit any further explanations than blaming the Trainer for the Horse's status. Hence, the PR has not established - on a balance of probability, as required under Article 3.1 of the EAD Rules – how the Prohibited Substance entered the Horse's system.
- 9.10 In the absence of establishing on the balance of the probability how the Prohibited Substance entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.
- 9.11 Even if the source of the Prohibited Substance was established, the Tribunal would still conclude that No (Significant) Fault or Negligence does not apply in this case because under Article 2.1.1 of the EAD Rules, it is the PR's personal duty to ensure that no Banned Substance is present in the Horse at any time.
- 9.12 From the foregoing, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, i.e., two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
- 9.13 The Tribunal takes note that the PR has been provisionally suspended since 15 January 2019, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension; at least the Tribunal has not been provided with information otherwise.
- 9.14 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

10. Disqualification

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals,

¹ See for example Case 2016/BS02 SUR (MABROUK), Tribunal Decision dated 27 March 2017.

points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

11. Sanctions

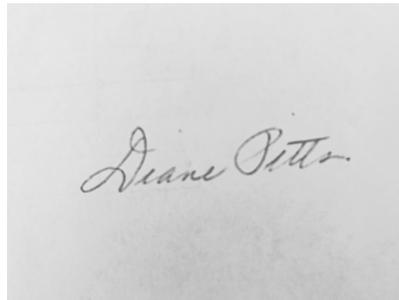
- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The PR shall be suspended for a period of **two (2) years**, the period of Provisional Suspension, effective from 15 January 2019 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 14 January 2021**.
 - 2) The PR is fined **seven thousand five hundred Swiss Francs (CHF 7,500)**.
 - 3) The PR shall contribute **two thousand Swiss Francs (CHF 2,000)** towards the costs of these proceedings.
- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 11.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration

for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL

A rectangular box containing a handwritten signature in cursive script that reads "Diane Pitts".

Ms. Diane Pitts, one member panel