

**DECISION of the FEI TRIBUNAL
dated 19 March 2020**

Case: 2019/CM02

Horse/Passport: ALTANERA/105AI65/UAE

Person Responsible/ID/NF: Facundo LEITES/10055292/URU

Trainer/ID/NF: Ali Nasser Sultan AL YABHOUNI/10072571/UAE

Event/ID: CEI1* 100 - Abu Dhabi, Al Wathba (UAE), 2018_CI_1889_E_S_02

Date: 08.12.2018

Prohibited Substance: Hydroxydetomidine

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, changes effective 1 January 2018.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes 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.

FEI Guidelines for Fines and Contributions towards Legal Costs ("**FEI Guidelines**"), effective as of 1 January 2018.

1. Person Responsible: Mr. Facundo Leites.

2. 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."

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 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."

ECM Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6. A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation."

ECM Rules Art. 10.8.1: "For a Person Responsible and/or member of the Support Personnel's second ECM Rule violation (within the previous

4 years), the period of Ineligibility shall be the greater of:

- (a) three months;
- (b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under Article 10.6; or
- (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.”

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 ALTANERA (the “**Horse**”) participated at the CEI1* 100 in Abu Dhabi, Al Wathba (UAE), on 8 December 2018 (the “**Event**”), in the discipline of Endurance. The Horse was ridden by Mr. Facundo Leites, 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 8 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 urine and blood sample number 5575298 (the “**A-sample**”) and reported an adverse analytical finding of Hydroxydetomidine in the blood and the urine.
- 1.4 Hydroxydetomidine (a metabolite of Detomidine) is a sedative used for the sedation and anaesthetic premedication in horses and other large animals. The substance is classified as a Controlled Medication Substance under the FEI Equine Prohibited Substances List (the “**FEI List**”). The positive finding for Hydroxydetomidine without a valid Veterinary Form gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 14 January 2019, the FEI Legal Department officially notified the PR, through his National Federation, the National Federation of Uruguay (“**URU-NF**”), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the “**Notification Letter**”).
- 2.2 The Notification Letter further states that since the PR has a prior Controlled Medication Rule violation in March 2017 (Case 2017/CM08 ASCOT DE MONTFLUQ) he is no longer eligible for the Administrative Procedure.

3. The B-Sample analysis

- 3.1 The PR and the Owner 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 18 February 2018, the PR submitted that since the Horse was dangerous to the groom when it was clipped 35 hours prior to the race, the Horse was sedated with Detomidine (Domosedan) at a volume of 0.4 ml. This was usual procedure and they never had any positive cases beforehand. For the future they will change and clip the horses earlier if they need sedation.
- 4.2 The PR added that there was no aim of cheating or having any benefit in the performance of the Horse. The only reason for the administration was that the Horse was dangerous and could have hurt herself or the people around her.

5. Written Response by the FEI

- 5.1 On 5 March 2020, the FEI provided its Response in this case.
- 5.2 In essence, the FEI submitted that:
 - a) Article 3.1 of the ECM Rules makes it the FEI’s burden to establish all of the elements of the ECM 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 ECM Rule violation under Article*

2.1". Instead it is a "strict liability" offence, established simply by proof that a Controlled Medication 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 Hydroxydetomidine and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR nor the Owner did not dispute the presence of this substance 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 ECM Rules.

- c) Where a Controlled Medication Substance is found in a horse's sample, a clear and unequivocal presumption arises under the ECM 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 ECM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six (6) months, unless he is able to rebut the presumption of fault. If the PR fails to do so, the six (6) months period of Ineligibility applies.
- d) The ECM 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 Controlled Medication Substance in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Hydroxydetomidine has entered the Horse's system. In this case, the PR explained that all horses going to the race were clipped 35 hours before the race. The Horse was behaving dangerously therefore sedated with Domosedan to avoid hurting herself and the groom. Following the PR's explanation, the FEI requested for further information, which the PR has however not provided. Moreover, the FEI submitted that taking into account the detection time for Detomidine (Domosedan), which is 48 hours, the FEI found the PR's explanations to be a scientifically plausible source for the positive finding. However, the FEI found that the PR's explanation was unsubstantiated in its entirety. The PR has not provided any piece of evidence attesting the administration of Domosedan for the purpose of clipping. The threshold requirement for proving how the substance entered the Horse's system has, therefore, not been fulfilled.
- e) Since the PR has not established how the Controlled Medication Substance entered the body of the Horse, there could be no reduction

of the standard sanction for Controlled Medication Substances, namely a six (6) months period of Ineligibility.

- f) However, the FEI needed to furthermore apply Article 10.8 of the ECM Rules (Multiple Violations) since the present case was the PR's second ECM Rule violation. The aforementioned article requires for the period of Ineligibility for a Person's Responsible second ECM Rule violation within the previous four (4) years to be greater of (a) three (3) months; (b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under Article 10.6 of the ECM Rules; or (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were the first violation, without taking into account any reduction under Article 10.6 of the ECM Rules. The greatest of the above stated options was therefore one (1) year. The FEI therefore submitted that the applicable period of Ineligibility imposed on the PR in the present case should be one (1) year.
- g) The FEI respectfully requested that the Tribunal issue a decision:
 - (i) upholding the charge that the PR violated Article 2.1 of the ECM 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 ECM Rules;
 - (iii) imposing a period of Ineligibility of one (1) year on the PR, commencing from the date of the final decision;
 - (iv) fining the PR in the amount of 3 500 CHF; and
 - (v) ordering the PR to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings.

6. Further proceedings

- 6.1 On 5 March 2020, the Case File in the present case was received by the FEI Tribunal.
- 6.2 On 6 March 2020, the FEI Tribunal Deputy Chair nominated a one member panel for the case at hand. Further, the Tribunal provided the PR with the opportunity to respond to the FEI Response, as well as the possibility to request for a hearing in the present case.
- 6.3 The PR did however not provide any further submission or request 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 159 of the GRs, the ECM Rules, as well as 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.

9. The Decision

- 9.1 As set forth in Article 2.1 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. 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 Hydroxydetomidine in the urine and blood sample taken from the Horse at the Event. The PR did not challenge the accuracy of the test results and the positive finding. This substance is considered a Controlled Medication Substance under the FEI List and the presence of Hydroxydetomidine in a Horse's body during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM 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 ECM Rules.
- 9.3 Pursuant to Article 10.2.1 of the ECM Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Controlled Medication Substance in a Horse's sample, as in the case at hand, shall be six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the ECM Rules. The period of ineligibility can be increased pursuant to Articles 10.7 or 10.8 of the ECM Rules.
- 9.4 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, 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 ECM Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the ECM Rules.

- 9.5 In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Furthermore, the Tribunal notes that the PR does not claim the applicability of Article 10.6 of the ECM Rules.
- 9.6 The Tribunal takes note of the PR's explanations with regard to the source of the Prohibited Substance, namely that the Horse was administered 0.4 ml of Domosedan, containing Detomidine, around 35 hours prior to the race during clipping. The Tribunal also notes that the FEI finds the PR's explanations scientifically plausible for the positive finding.
- 9.7 However, the Tribunal agrees with the FEI. The PR has not substantiated his explanation, even after having been requested by the FEI to do so. Neither has the PR provided the Medication Logbook for the Horse. As a result, the PR's explanations remain mere speculations without any evidence.
- 9.8 As a result, the Tribunal finds that the PR has not established – on a balance of probability, as required under Article 3.1 of the ECM Rules – how the Prohibited Substance entered the Horse's system.
- 9.9 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.
- 9.10 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 ECM Rules, it is the PR's personal duty to ensure that no Prohibited Substances are present in the Horse's system during an Event without a valid Veterinary Form, and the PR has not provided any information/evidence which procedures were put in place or what due diligence was exercised to fulfil this duty.
- 9.11 In this regard, the Tribunal also wishes to clarify that the PR is responsible for the actions of his support personnel, including his groom in the case at hand. While it is not clear from the PR's explanations who administered the Domosedan to the Horse, the Tribunal finds that it was the PR's responsibility as the rider of the Horse during the Event to assure that the Horse was free of any Prohibited Substances. Further, for the avoidance of any doubt, a rule violation has been established with the mere presence of a Prohibited Substance in a Horse's system during an event. Whether or not this substance was performance enhancing, or administered without any performance enhancing intent does not change

the fact that a rule violation has occurred. While this could be relevant with regard to the PR's degree of fault, the Tribunal does not find that – absent of any further explanations by the PR – this leads to No or No Significant Fault in the present case.

- 9.12 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.
- 9.13 In addition, the Tribunal takes note that the present rule violation is the PR's second ECM rule violation within the previous four (4) years. It follows from Article 10.8 of the ECM Rules that for a PR's second ECM Rule violation (within the previous 4 years) – such as in the case at hand-, the period of Ineligibility shall be the greater of (a) three (3) months; (b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under Article 10.6 of the ECM Rules; or (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were the first violation, without taking into account any reduction under Article 10.6 of the ECM Rules.
- 9.14 Therefore, the period of Ineligibility to be imposed on the PR is one (1) year.
- 9.15 Pursuant to Article 10.2 of the ECM Rules and in following the FEI Guidelines, as well as in taking into consideration all circumstances of the case at hand, the Tribunal finds a fine in the amount of 3,500 CHF and costs in the amount of 1,500 CHF as appropriate for the present case.
- 9.16 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 ECM 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, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

11. Sanctions

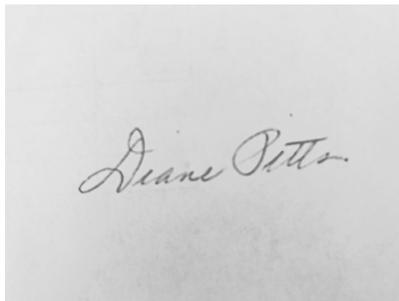
- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be one (1) year.

- 11.2 The 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 **one (1) year**, starting from the date of this Decision. Therefore, the PR will be ineligible through **18 March 2021**.
 - 2) The PR is fined **three thousand five hundred Swiss Francs (CHF 3,500)**.
 - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500)** 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 ECM 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 10.11.2 of the ECM 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 ECM 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 the 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