

DECISION of the FEI TRIBUNAL
dated 19 March 2020

Positive Controlled Medication Case No.: 2019/CM05

Horse: GHALIAT JOODAH

FEI Passport No: 105VW35/KSA

Person Responsible/NF/ID: Faris ALHWAITY/KSA/10168213

Event/ID: CEI1* 80 – Al Qaseem (KSA)/ 2019_CI_1640_E_S_01

Date: 12 January 2019

Prohibited Substances: Phenylbutazone, Oxyphenbutazone and Lidocaine

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, 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 2019, 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 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1 January 2019.

Veterinary Regulations (“**VRs**”), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

1. Person Responsible: Mr. Faris ALHWAITY.

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.”

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 GHALIAT JOODAH (the "**Horse**") participated at the CEI1* 80 in Al Qaseem (KSA), on 12 January 2019 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Faris Alhwaity, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**"). Mr. Alhwaity was also the registered Trainer for the Horse at the time of the Event.
- 1.2 The Horse was selected for sampling during the Event on 12 January 2019. 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 5566864 (the "**A-sample**") and reported an adverse analytical finding of Oxyphenbutazone, Phenylbutazone, and Lidocaine.
- 1.4 Phenylbutazone is an anti-inflammatory drug with analgesic effects. Oxyphenbutazone is a metabolite of Phenylbutazone. Lidocaine is a local anaesthetic and also used for the treatment of certain skin diseases. The substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding for these substances without a valid Veterinary Form gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 11 February 2019, the FEI Legal Department officially notified the PR, through his National Federation, the Saudi Arabia National Federation ("**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.

3. The B-Sample analysis

- 3.1 The PR was informed that he and the Owner 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 7 March 2019, the PR submitted that this was his first participation in an Equestrian race. Further, he had no knowledge regarding the use of veterinary medicines, and that he had contacted a veterinarian 10 days prior to the race and treated a previous injury of the Horse.
- 4.2 The PR provided a statement by the veterinarian, who stated that the joints in the spine of the Horse were injected which required them to anaesthetise the Horse. The veterinarian further provided x-ray images of the Horse's injury.

5. Preliminary Decision

- 5.1 On 1 November 2019, upon prior request by the FEI, the Tribunal decided to lift the Provisional Suspension of the PR, and issued a Preliminary Decision.

6. Written Response by the FEI

- 6.1 On 10 March 2020, the FEI provided its Response in this case.
- 6.2 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 Oxyphenbutazone, Phenylbutazone, and Lidocaine and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR or the Owner did not dispute the presence of those 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 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 substances 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 Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Oxyphenbutazone, Phenylbutazone, and Lidocaine have entered the Horse's system. In this case, the PR stated that the Horse's previous injury was treated 10 days prior to the race. The Veterinarian further explained that the joints in the spine of the Horse were injected which required anesthetization. Following the PR's explanation, the FEI requested further information, and additional supporting documents. The PR provided no further explanation. The FEI found that the PR's explanation was lacking decisive information. In order for the FEI to be able to evaluate the plausibility of the explanation submitted by the PR it would need to have the information of the administered medication, their purpose, dose etc. In addition, the information would need to be substantiated. Therefore, the FEI was not satisfied that the PR has met his burden of proving, on a balance of probability, how the Prohibited Substances entered into the Horse's system. The threshold requirement for proving how the substance entered the Horse's system has, therefore, not been fulfilled.
- e) Further, as CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he is competing with, and cannot delegate that duty to another person. He therefore had an obligation to ensure that no Prohibited Substance entered into the Horse's system, and had to act with utmost caution in order to fulfil this duty.
- f) Since the PR has not established how the Controlled Medication Substances entered the body of the Horse, there could be no reduction of the standard sanction for Controlled Medication Substances, namely six (6) months period of Ineligibility.
- 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 six (6) months on the PR, commencing from 11 February 2019 (the date upon which the Provisional Suspension was imposed);*
- (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.*

7. Further proceedings

- 7.1 On 10 March 2020, the Case File in the present case was received by the FEI Tribunal.
- 7.2 On the same day, 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. The PR did however not provide any further submission or request for a hearing to be held.

8. Jurisdiction

- 8.1 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.

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 he was the Horse's rider at the Event. The Tribunal wishes to clarify that while support personnel might be held responsible for a rule violation in addition, the PR as rider of the Horse remains the main Person Responsible.

10. The Decision

- 10.1 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 Oxyphenbutazone, Phenylbutazone and

Lidocaine 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. These substances are considered Controlled Medication Substances under the FEI List and the presence of these substances in a Horse's body during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.

- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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 Substances 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.
- 10.6 The Tribunal takes note of the PR's explanations with regard to the source of the Prohibited Substance, namely that the Horse was treated 10 days prior to the race for an injury. The Tribunal also notes that the Veterinarian further explained that the joints in the spine of the Horse were injected which required anesthetization.
- 10.7 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.
- 10.8 In the absence of establishing on the balance of the probability how the Prohibited Substances entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.

- 10.9 Even if the source of the Prohibited Substances 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 on whether any procedures were in place or what due diligence was exercised to fulfil this duty. In this respect, the Tribunal also notes that the PR explained that this was his first race, and that he had no knowledge regarding medications to be administered to the Horse. While the PR does not specify whether he was aware of the EADCMRs, the Tribunal finds that he had to make himself aware of the rules and regulations which apply when entering an FEI competition, no matter whether this was his first race or not.
- 10.10 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility can be granted.
- 10.11 The Tribunal takes note that the PR has been provisionally suspended from 11 February 2019 to 1 November 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.
- 10.12 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.

11. Disqualification

- 11.1 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.

12. Sanctions

- 12.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be six (6) months.
- 12.2 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 **six (6) months**, the period of Provisional Suspension, effective from 11 February 2019 to 1 November 2019 shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the PR is eligible to compete as from the date of this Decision.
 - 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.
- 12.3 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).
- 12.4 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).
- 12.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.6 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 his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in blue ink, appearing to read "Torrente", is centered on the page. The signature is stylized with a large loop at the top and a horizontal line across the middle.

Mr. Cesar Torrente, one member panel