

DECISION of the FEI TRIBUNAL
dated 18 June 2020

Positive Controlled Medication Case No.: 2019/CM07

Horse: THREE OAKS SHERMALI

FEI Passport No: 104EH75/KSA

Person Responsible/NF/ID: Nazal ALONIZI/KSA/10133826

Trainer/NF/ID: Nazal ALONIZI/KSA/10133826

Event/ID: CEI2* 120 – Al Ula (KSA)/ 2019_CI_0094_E_S_01_01

Prohibited Substances: Oxyphenbutazone, Phenylbutazone, Clenbuterol and Mepivacaine

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez, 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.

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

1. Person Responsible: Mr. Nazal Alonizi.

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 THREE OAKS SHERMALI (the "**Horse**") participated at the CEI2* 120 in Al Ula (KSA), on 2 February 2019 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Nazal Alonizi, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**"). The PR was also the registered Trainer of the Horse at the time of the Event.
- 1.2 The Horse was selected for sampling during the Event on 2 February 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 5578288 (the "**A-sample**") and reported an adverse analytical finding of Oxyphenbutazone, Phenylbutazone, Clenbuterol and Mepivacaine.
- 1.4 Phenylbutazone and Oxyphenbutazone are anti-inflammatory drugs with analgesic effects. Oxyphenbutazone is a metabolite of Phenylbutazone. Clenbuterol is a bronchilator used in the treatment of bronchitis and allergic airway disease. Mepivacaine is a local anaesthetic used for infiltration, peripheral nerve block and epidural anaesthesia. These 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 From gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. Proceedings by the FEI

- 2.1 On 4 March 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.

- 2.2 As part of the notification 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 the PR or the Owner challenge the analysis results of the A-sample.
- 2.3 On 30 November 2019, the PR submitted as follows:
- "This is to inform you that I recently participated in Ala'a horse racing of 120 Kilometers, my horse (Three Oaks Shermali) had a cold prior to the race and was given medicine, which contained a prohibited substance, and at the time I was not fully aware of, since this was actually my first time officially racing. If possible, I am kindly requesting that you take this into consideration."*
- 2.4 On 19 December 2019, and upon request by the FEI (remitted on 17 December 2019), a Preliminary Hearing panel decided to lift the Provisional Suspension of the PR as of 19 December 2019, midnight CET. The Preliminary Decision reads as follows:
- "The Tribunal takes note that, on 4 December 2019, the PR has been provisionally suspended for nine (9) months, i.e., longer than the six (6) months standard sanction. Whether the FEI establishes that a sanction greater than the standard sanction should apply in the case at hand has ultimately to be decided the panel deciding the case on the merits. However, given that there might be a possibility that the Provisional Suspension, if maintained, could result in a longer duration than the Final Suspension imposed by the Tribunal, the Preliminary Hearing Panel decides to lift the Provisional Suspension at this point in time in the proceedings."*
- 2.5 On 6 January 2020, the FEI requested the PR to provide further information on the exact medication used and on the treatment performed, to which request the PR did not respond.
- 2.6 On 1 May 2020, the FEI provided its Response in this case. 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, Clenbuterol and Mepivacaine 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, Clenbuterol and Mepivacaine have entered the Horse's system. In this case, the PR explained that the Horse had a cold prior to the Event and was treated with a medication containing Prohibited Substances, which the PR was not aware of. 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, which was not the case. The FEI was not satisfied that the PR 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 substances entered the Horse's system has, therefore, not been fulfilled.
- e) 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.

- f) Additionally, the FEI highlighted that there were several different Controlled Medication Substances present in the Horse's sample. The "cocktail" of the Controlled Medication Substances present in the horse's sample consists of anti-inflammatory medication, bronchodilator used in the treatment of Horse's respiratory system and local anaesthetic used for infiltration, peripheral nerve block and epidural anaesthesia. This indicated several medical treatments/conditions of the Horse that in the FEI's view would render the horse absolutely unfit to compete. This was an aggravating circumstance that needed to be considered and which required a greater sanction than the standard sanction in accordance with Article 10.7 of the ECM Rules. Such approach has been confirmed in previous FEI Tribunal decisions in similar cases e.g., 2018/CM03 DR BURN and 2018/CM05 CHIRO D'ANDUERE where a one (1) year period of Ineligibility was imposed to those Persons Responsible.
- g) Lastly, the FEI had also taken into account the PR's young age at the time of the Event and his inexperience in International Competitions and deemed it proportionate, taking into account the totality of circumstances of this case, that the applicable period of Ineligibility imposed on the PR in the present case should be nine (9) months.
- h) The FEI submitted the following prayers for relief:
 - (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 nine (9) months on the PR, commencing from 4 March 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.

3. Proceedings in front of the FEI Tribunal

- 3.1 On 1 May 2020, the Case File in the present case was received by the FEI Tribunal.
- 3.2 On 8 May 2020, the FEI Tribunal Chair nominated a one member panel for

the case at hand. Further, the Tribunal granted the PR with the opportunity to respond to the FEI Answer and to provide further explanations (if any), 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.

4. Jurisdiction

- 4.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, Article 8.1.1 of the ECM Rules, as well as Article 18 of the IRs.

5. The Person Responsible

- 5.1 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.

6. The Decision

- 6.1 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, Clenbuterol and Mepivacaine 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.
- 6.2 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.
- 6.3 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. Depending on the individual case, the existence of aggravating circumstances may increase the period of ineligibility (cf. art. 10.7 of the ECM Rules).

- 6.4 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.
- 6.5 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.
- 6.6 The Tribunal takes note of the PR's explanations that the Horse allegedly suffered from a cold and was treated with a medication containing a Prohibited Substance. However, he did not submit any evidence supporting his explanation. Without such evidence his explanations remain mere speculation. 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 Substances entered the Horse's system.
- 6.7 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.
- 6.8 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.
- 6.9 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted.
- 6.10 In addition, the Tribunal takes note that several different Prohibited Substances were detected in the Horse's sample. It follows from Article 10.7 of the ECM Rules, that the occurrence of multiple substances may be considered as a factor in determining aggravating circumstances. In taking into consideration the cocktail of the anti-inflammatory medication, bronchodilator used in the treatment of Horse's respiratory system and local anaesthetic used for infiltration, peripheral nerve block and epidural anaesthesia considered as Prohibited Substances found in

the Horse's sample, the Tribunal finds that indeed aggravating circumstances are present in the case at hand. The Tribunal therefore decides to impose a period of Ineligibility greater than the standard sanction provided for in Article 10.2 of the ECM Rules.

- 6.11 In the past, the Tribunal has consistently imposed a one (1) year period of Ineligibility in cases concerning cocktails of Controlled Medication Substances.¹ In the present case, the FEI is of the view that in taking into account the PR's young age at the time of the Event and his inexperience in International Competitions, a period of Ineligibility of nine (9) months was deemed as proportionate by the FEI.
- 6.12 The Tribunal however does not agree with the FEI's assessment. According to information retrieved from the FEI Database it is clear that the PR, who was nineteen (19) years old at the time of the Event, is registered with the FEI since 2015 and has also competed in FEI events since that time. Contrary to the PR's submission, this was not his first international event. In fact, he is registered to have competed in international events, i.e., FEI sanctioned events, once in 2015, once in 2018, and once in 2019 just prior to the Event in question. In addition, the Tribunal notes that the PR is also registered as Trainer since 2015. As a result, the PR can in the Tribunal's view not be merely regarded of young age, neither as inexperienced with international competitions.
- 6.13 In following its previous decisions, the Tribunal wishes to highlight that any riders competing in FEI events have to make themselves familiar with the applicable rules and regulations, including the EADCMRs. Ignorance of the rules cannot be accepted as a valid excuse. *In casu*, this is even more so the case given that the PR has been registered as Athlete, as well as Trainer already in 2015 for the first time, i.e., four (4) years prior to the Event and the rule violation in the case at hand.
- 6.14 In considering all circumstances in the present case, the Tribunal finds a period of Ineligibility of one (1) year as proportionate.
- 6.15 Further, the Tribunal takes note that the PR has been provisionally suspended from 4 March 2019 until 19 December 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.

¹ See for example Case 2019/CM09 ALRAHAWI, Final Tribunal Decision dated 5 March 2020; Case 2019/CM01 SANAD, Final Tribunal Decision dated 20 January 2020, Case 2018/CM05 CHIRO D' ANDRUERE, Final Tribunal Decision dated 23 October 2018, and Case 2018/CM03 DR BURN, Final Tribunal Decision dated 23 October 2018.

- 6.16 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.

7. Disqualification

- 7.1 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.

8. Sanctions

- 8.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be one (1) year.
- 8.2 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**, the period of Provisional Suspension, effective from 4 March 2019 until 19 December 2019, i.e., 9 months and 15 days, shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the PR is suspended for the remaining time (2 months and 15 days), as from the date of notification.
 - 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.
- 8.3 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).
- 8.4 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).

- 8.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 8.6 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



Mr. José A. Rodríguez Alvarez, one member panel