

**Decision of the FEI Tribunal
dated 25 June 2020**

Positive Controlled Medication Case No.: 2019/FT07

Horse: CASTLEBAR CADABRA **FEI Passport No:** 104WF08/UAE

Trainer/ID/NF: Khalifa Ghanim AL MARRI/10040564/UAE

Event/ID: CEI3* 160 – Dubai (UAE)/ 2019_CI_0489_E_S_01

Date: 2 – 5 January 2019

Prohibited Substances: Dexamethasone

Positive Controlled Medication Case No.: 2019/CM06

Horse: VAGABON DE POLSKI **FEI Passport No:** 105AQ71/UAE

Trainer/ID/NF: Khalifa Ghanim AL MARRI/10040564/UAE

Event/ID: CEIYJ2* 120 – Bou Thib (UAE)/ 2019_CI_0490_E_YJ_01

Date: 11 January 2019

Prohibited Substances: Theophylline, Caffeine, Theobromine, Paraxanthine

Positive Controlled Medication Case No.: 2019/CM08

Horse: CASTLEBAR CADABRA **FEI Passport No:** 104WF08/UAE

Trainer/ID/NF: Khalifa Ghanim AL MARRI/10040564/UAE

Event/ID: CEI3* 160 – Abu Dhabi, Al Wathba (UAE)/2019_CI_0494_E_S_01_01

Date: 9 February 2019

Prohibited Substances: Flunixin, Flumetasone

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 the Trainer:** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available to the Trainer.
- 3. Hearing:** Right was waived by the Trainer.

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 Endurance Rules ("**ERs**"), Updated 9th Edition, effective 1 February 2019.

2. Trainer: Mr. Khalifa Ghanim Al Marri, represented by Bär & Karrer, Zurich, Switzerland.

3. Justification for Tribunal finding:

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 Article 7.4.1: “(...) Additionally, and notwithstanding the above provisions or the provisions of Article 7.4.2 below, for the discipline of Endurance, the FEI shall provisionally suspend the registered Trainer of the Horse based on all of the following elements:

(i) an Adverse Analytical Finding for one (1) Controlled Medication Substance (including its metabolites or markers) from the A Sample or A and B Samples, except where the Controlled Medication Substance is a Specified Substance;

and

(ii) a previous violation of the ECM Rules within the last four (4) years or a previous violation of the EAD Rules within the last ten (10) years involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s);

and/or

(iii) a pending EAD or ECM Rule violation involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s).”

ERs Article 800: “3. For the purpose of this Codex, the “Trainer” is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. 4. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments 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 fully 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 On 12 February 2019, a Provisional Suspension was imposed on the Trainer as registered Trainer for the horse, following the positive finding of the Prohibited Substance Dexamethasone in the sample of the horse CASTLEBAR CADABRA (the "**Horse 1**") ridden by the PR at the CEI3* 160, in Dubai, United Arab Emirates (UAE), from 2 to 5 January 2019 (the "**Event 1**").
- 1.2 The Notification Letter of 12 February 2019 further stated that the Trainer's previous violations as per Article 7.4.1 (ii) of the ECM Rules are as follows: (i) Case 2017/BS05 SALAM BANQUETOL; (ii) Case 2017/BS07 TOM JONES TE; and (iii) Case 2019/BS08 ASPENVIEW AMIR.
- 1.3 The Horse 1 was selected for sampling during the Event 1 on 4 January 2019. Analysis of the urine and blood samples at the FEI approved laboratory – The Hong Kong Jockey Club (the "**Laboratory**") – revealed the presence of Dexamethasone in the urine.
- 1.4 On 13 February 2019, the FEI informed the Trainer via the UAE-NF of the positive finding in the Case 2019/CM06 VAGABON DE POLSKI, and notified the Trainer that since he was the registered Trainer at the time of the Event the rule violation will be assessed in conjunction with his recent rule violation, i.e., Case 2019/FT07 CASTLEBAR CADABRA.
- 1.5 The horse VAGABON DE POLSKI (the "**Horse 2**" and together with Horse 1 the "**Horses**") was selected for sampling during the CEIYJ2* 120 in Bou Thib, UAE on 11 January 2019 (the "**Event 2**"). Analysis of the urine and blood samples at Laboratory revealed the presence of Theophylline, Caffeine, Theobromine and Paraxanthine in the urine.
- 1.6 On 4 March 2019, the FEI further informed the Trainer via the UAE-NF of the positive finding in the Case 2019/CM08 CASTLEBAR CADABRA, and notified the Trainer that since he was the registered Trainer at the time of the Event the rule violation will be assessed in conjunction with his recent rule violations, i.e., Case 2019/FT07 CASTLEBAR CADABRA, and Case 2019/CM06 VAGABON DE POLSKI.
- 1.7 The Horse 1 was selected for sampling during the CEI3* 160 in Abu Dhabi, Al Wathba, UAE on 9 February 2019 (the "**Event 3**" and together with Event 1 and Event 2 the "**Events**"). Analysis of the urine and blood samples at Laboratory revealed the presence of Flunixin in the blood and Flumetasone in the urine.
- 1.8 Dexamethasone is a corticosteroid with anti-inflammatory effects. Flunixin is an anti-inflammatory medication with analgesic effects. Flumetasone is a corticosteroid used in the treatment of skin disease.

Theophylline is a bronchodilator used in the treatment of respiratory disease. Caffeine is a stimulant which stimulates the central nervous system. Theobromine is a vasodilator used in the treatment of hypertension and angina. Paraxanthine is a stimulant which stimulates the central nervous system. Caffeine can be a direct metabolite of Theophylline. Theobromine and Paraxanthine can be metabolites of Caffeine. These substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). Theophylline, Caffeine, Theobromine and Paraxanthine are further designated as Specified Substances. The positive finding of these substances without a valid Veterinary Form in a Horse's sample constitutes a *prima facie* Controlled Medication Rule violation.

2. The B-Sample analysis

- 2.1 Together with the Notification Letters of 12 February 2019, 13 February 2019 and 4 March 2019, the Trainer was also informed that he was entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive samples; (ii) to attend or be represented at the B-Samples analysis; and/or (iii) to request that the B-Samples be analysed in a different laboratory than the A-Samples.
- 2.2 On 12 April 2019, the FEI notified the Trainer and the PR of the results of the B-sample analysis of the sample taken from Horse 1 during the Event 1, which confirmed the presence of Dexamethasone.
- 2.3 On 18 April 2019, the FEI notified the Trainer and the PR of the results of the B-sample analysis of the sample taken from Horse 1 during the Event 3, which confirmed the presence of Flunixin and Flumetasone in the B-sample.
- 2.4 On 9 May 2019, the FEI notified the Trainer and the PR of the results of the B-sample analysis of the sample taken from Horse 2 during the Event 2, which confirmed the presence of Theophylline and Caffeine.

3. Preliminary Decision

- 3.1 On 7 February 2020, the FEI requested the lifting of the Provisional Suspension of the Trainer. Furthermore, the FEI requested that the above mentioned cases concerning the Trainer to be consolidated.
- 3.2 On 14 February 2020 and on 17 February 2020, the Trainer requested the Tribunal to confirm that the Provisional Suspension will be lifted as per FEI request.
- 3.3 On 18 February 2020, the Tribunal issued a Preliminary Decision and decided to lift the Provisional Suspension of the Trainer, who was at the

time provisionally suspended for over one year, i.e., since 12 February 2019.

- 3.4 The Tribunal further decided to consolidate the cases since the proceedings are in relation to the same individual and occurred within a similar timeframe - prior to the notification of the first violation.

4. Written submissions by the Trainer

- 4.1 On 2 September 2019, the Trainer provided his submissions for the cases. The Trainer submitted the following prayers for relief:

i) Admitting the present Written Explanation;

ii) Declaring that Claimant shall not be considered an Additional PR and that no sanction shall be imposed on the Claimant;

iii) In any event, ordering the immediate lifting of Claimants' provisional suspension;

iv) In any event, ordering the FEI to bear the costs of the present proceedings and to pay an appropriate contribution towards the Claimant's legal costs and other expenses related to the present proceeding.

- 4.2 In essence, the Trainer argued that since the FEI's approach, according to which Endurance trainers shall automatically be considered Additional PR's violates the principles of legality, equal treatment as well as proportionality and unlawfully reverses the burden of proof, the Trainer could not legally be considered as the Additional PR. In any event, the Trainer was not at the concerned events and did not take any relevant decision about the Horses. He could therefore not be considered as an Additional PR.

- 4.3 More specifically, the Trainer submitted as follows:

a) He was a successful endurance rider, trainer and horse owner from the UAE.

b) He could only be considered an Additional PR if he was present at the Events or has made relevant decisions about the Horses during the Events. However, he was neither present at the Events, and did not make decisions about the Horses during the Event. He was not trainer to one or two horses, but to several horses. The Horses were selected by the stable management, treated by the stable veterinarians and taken care of by the grooms. There was simply no justification to hold him responsible for errors that happened during the Events.

- c) Following the principle of legality to automatically consider every trainer as an Additional PR would require a clear legal basis in the regulations of the FEI; however, there were none. It was nowhere written that an Endurance trainer is *per se* considered an Additional PR according to Article 118.3 of the GRs. To the contrary they shall only be considered Additional PRs "if they are present at the Event or have made a relevant Decision about the Horse".
- d) Furthermore, if one were to automatically consider trainers as Additional PR's, this would lead to an inadmissible reversal of the burden of proof. It was the FEI who had to proof that the Trainer was at the Events or did make relevant decisions about the Horses in order to consider the Endurance trainers Additional PRs. Since negative facts were not accessible to direct evidence, the FEI could not seriously argue that it would be the obligation of the Trainer to prove that he was not at the Events and did not make any relevant decision about the Horses.
- e) Moreover, the FEI's approach to treat Endurance trainers differently than trainers of other disciplines violated equal treatment, and there was no valid justification for FEI's unequal treatment of Endurance trainers. He was of the firm view that the responsibility for the health of the horses is and should be the same for all trainers of all FEI disciplines.
- f) Finally, the strict liability rule was based on the concept of one person being strictly responsible for a doping violation (regardless whether this person was at fault or not). The application of the strict liability rule to all persons who have something to do with the Horses in the furthest sense – like the Trainer in the case at hand – would violate the principle of proportionality. Therefore, only the closest person to the Horses should be strictly responsible for the AAFs and all other persons who have somehow a connection to the Horse – like the Trainer – shall only be sanctioned in case of fault. He was the Trainer of several horses. The FEI could not argued that he has the main responsibility and the control over all the horses. Since he was not present at the Events and did not take any relevant decisions about the Horses, the FEI could not blame him for anything.

5. Written submission by the FEI

5.1 On 14 April 2020, the FEI provided its Response.

5.2 The FEI requested the following prayers for relief:

- i. upholding the charge that the Trainer has violated Article 2.1 of the ECM Rules;*

- ii. *imposing a period of Ineligibility of one (1) year on the Trainer, taking into account the already served provisional suspension;*
- iii. *fining the Trainer in the amount of 7,000 CHF; and*
- iv. *ordering the Trainer to pay the legal costs of 3,500 CHF that the FEI has incurred in these proceedings.*

5.3 In essence the FEI submitted that:

- a) Since his registration as a Trainer in the year 2014, the Trainer has trained 521 FEI registered horses, and in the year 2019 he was the registered Trainer for 154 horses. Further, he was the registered trainer for the Horses at the time of the Events.
- b) In Endurance pursuant to Article 800 of the ERs, the Trainer is defined as *"the person who is in charge of the preparation of the Horse both physically and mentally for Competition"*. Due to the specificities of the Endurance discipline with Trainers making relevant decisions about the horse, the Trainer was regarded as an additional Person Responsible in accordance with Article 118.3 of the GRs.
- c) In this regard, the FEI provided background information on the procedures adopted and the decision to make substantial changes to the Endurance rules incorporating the significant rule of the Trainers in the discipline of Endurance. More specifically, the FEI explained that in July 2013 an Endurance Strategic Planning Group ("**ESPG**") was put in place in order to put forward recommendations to reduce the number of horses testing positive for prohibited substances and the high numbers of injuries and fatalities in Endurance. One of the 41 recommendations by the ESPG in its Final report and Recommendations for the Bureau in February 2014 was for the *"Trainers to be directly registered with the FEI and held responsible with their riders for their action but not necessarily in equal proportion. The FEI's Endurance Committee will be expected to develop the definition of the Trainer."* As a result "Trainers" were defined in the ERs (Article 800.3-4), and this definition specifically applies for the discipline of endurance, and is considered as a specific rule for this discipline only.
- d) The Trainers in Endurance take important and concrete decisions about the horses they train, such as (i) which feed and supplements (if any) is being fed to the horse; (ii) shoeing type and cycle; (iii) choice of the veterinarian, (iv) veterinarian treatments including the administration of medications; (v) training regime and exercise program; (vi) competition schedule. These are crucial decisions that have important implications from an anti-doping perspective and which dictate whether or not a horse will have a violation of the

EADCMRs. It was for that reason that Trainers in Endurance were regarded as additional PRs with the riders remaining the Persons Responsible.

- e) The Definition of Person Responsible in the EADCMRs and the GRs read in conjunction with the ERs, made clear that Trainers are making relevant decisions about the horse. This was reflected in the EADCMRs under several provisions, e.g., Article 7 concerning Provisional Suspensions of Trainers. This Article evidently mandates the application of the provisions that apply to the Person Responsible to apply to the Trainer as well, where a Provisional Suspension is imposed on the Trainer. The imposition of a Provisional Suspension on a Trainer is obligatory in cases involving Adverse Analytical Findings (AAFs) of two or more Controlled Medication Substances with neither of them being a Specified Substance.
- f) The legal responsibility of the Trainer was defined in the ERs, GRs, and the EADCMRs, and thus satisfied the principle of legality.
- g) In the discipline of Endurance the Trainer has an important role and responsibility for each and every horse that he is training. It is therefore mandatory to register the Trainer in charge of each horse in the FEI database. The FEI as a prosecutor relied on the FEI database system, and the registration system allowed the FEI to hold registered people accountable in case of violations of FEI Rules and Regulations. Once a person was registered as a Trainer in the FEI Database that person was irrebuttably presumed to be the person that is responsible and in charge of the preparation of the horse both physically and mentally for competition. In consequence, the registered person bore any EADCMRs rule violation implications. Although a Trainer might decide to delegate the care (partially or entirely), this will not release the Trainer from his personal duty to ensure that no Prohibited Substances are found in the body of the horse as this duty is non-delegable and remains with the Trainer. The FEI argued that the more horses the Trainer is responsible for, while delegating the care of those horses to other people, the more difficulties he will encounter in exercising his duty of care. It was a risk the Trainer took upon himself as he was still strictly liable for any Rule Violation under the EADCMRs for any of his horses.
- h) Further, the definition of the Additional PR was clear as it required for a person to either be present at the Event or have made a relevant decision about the horse. The requirements were not cumulative. With the Trainers making relevant decisions about the horses' exercise programme, nutrition, appropriate veterinary care and the administration of therapeutic substances under veterinary advice, it was clear they were the Additional PRs regardless of their presence at

the Event. It was a Trainer's personal choice not to be present at the Event where his horse is competing.

- i) Further, the Trainer has previously accepted to be the Additional PR in the three prior cases, where he signed a settlement agreement.
- j) Therefore by registering as a Trainer with the FEI, the person complied with the definition of a Trainer as per the ERs and an irrebuttable presumption was established that the registered person was the person responsible for the preparation of the Horses prior to the Events. As a consequence of the foregoing, the FEI did not have the burden to prove that a Trainer has made a relevant decision about the horse since it was regulated in Article 800 of the ERs itself that the registered Trainer is making not one but several relevant decisions about the horse(s) he is training.
- k) The different treatment of Endurance trainers in comparison with trainers in other FEI disciplines did not violate the general principle of equal treatment and was not discriminatory. In no other discipline did a Trainer have such a significant decision making power in the management and care of a horse as in Endurance. This warranted a different approach that is applied to all Trainers in Endurance with the aim to hold the persons, which are actually responsible for the horse, accountable for any rule violation. Specific Trainer provisions were adopted into the EADCMRs, and the EADCMRs approved by the FEI General Assembly. The Tribunal did not have the authority to amend those provisions.
- l) With regard to the strict liability principle, the FEI submitted in essence that the question to be asked in Equestrian cases was who has the control over the horse's body, namely what the horse ingests, how the horse is trained, which veterinary treatments it undergoes etc. In most disciplines that is the rider of the horse. In Endurance, however, it is the trainer and the rider who have control over the horse's body. Holding only the rider responsible for a rule violation would allow for the actual persons that have control over the horses, i.e., the trainers to get away scot-free. The FEI has therefore implemented changes making trainers additionally responsible alongside with the riders. Contrary to Human Anti-Doping where one person has control over his/her own body, in equestrian sports the horse cannot be held legally responsible for the Prohibited Substances in its body, and therefore the legal responsibility for the horse's body was vested on the persons that have actual control over it. This reflected the rationale behind the strict liability principle in Human Anti-Doping. In Endurance, that was the trainer and the rider, and they are consequently both strictly liable for any Prohibited

Substances found in the horse's body. This was the approach, the FEI as the governing body of the FEI disciplines, decided upon in accordance with Article 16 of the WADC and it was the approach that in its best efforts was reflecting the reality of Endurance today. The Tribunal has previously confirmed in its decisions that the trainer is considered as the Additional PR.

5.4 With regard to the violations by the Trainer the FEI submitted as follows:

- 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 and B-samples taken from the Horses at the Events confirmed the presence of Controlled Medication Substances, and together constituted "sufficient proof" of the violations of Article 2.1 of the ECM Rules. In any event, the Trainer does not dispute the presence of those substances in the Horses' samples. Accordingly, the FEI submitted that it has discharged its burden of establishing that the Trainer 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 and/or an Additional 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 they are able to rebut the presumption of fault. If the Trainer fails to do so, the six (6) months period of Ineligibility applies.
- d) The ECM Rules and the jurisprudence of the FEI Tribunal and CAS on this regard are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the Trainer 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 Trainer's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Controlled Medication Substances in the Horses. The FEI submitted

in this context that the Trainer has to provide clear and convincing evidence that proves how the Prohibited Substances have entered the Horses' systems. The Trainer has not provided any explanations on how the Prohibited Substances could have entered the bodies of the Horses. The threshold requirement for proving how the substances entered the Horses' systems has, therefore, not been fulfilled.

- e) Since the Trainer has not established how the Controlled Medication Substances entered the bodies of the Horses, the FEI could not evaluate the Trainer's level of fault or negligence, and consequently there could be no reduction of the standard sanction for Controlled Medication Substances, namely six (6) months period of Ineligibility.
- f) Due to the fact of the Trainer being notified of the first rule violation (Case 2019/FT07) after the second and third rule violation occurred, Article 10.8.4.1 of the ECM Rules applied and the violations needed to be considered together as one violation for the purpose of imposing sanctions.
- g) However, in determining the final sanction, the FEI had to take into consideration the Trainer's prior rule violations in accordance with Article 10.8 of the ECM Rules. Accordingly, the FEI respectfully submitted that the applicable period of Ineligibility in the present case should be one (1) year.

6. Further proceedings

- 6.1 On 14 April 2020, the Tribunal received the Case File by the FEI for adjudication.
- 6.2 On 27 April 2020, the FEI Tribunal Chair nominated a one-member panel for the case at hand. Neither party objected to the constitution of the panel.
- 6.3 On the same day, the Trainer was granted with the opportunity to respond to the FEI Response, which submission was received on 2 June 2020 following the granting of two deadline extensions.
- 6.4 Moreover, the Tribunal asked the Parties to inform it whether a hearing was requested by either party. Both parties confirmed that no hearing was necessary and requested the Tribunal to issue its decision based on the written submissions only.

7. Rebuttal submission by the Trainer

- 7.1 The Trainer confirmed that the Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 7.2 To start with, the Trainer submitted that it was undisputed and acknowledged by the FEI that he was responsible for a very high number of horses. It was therefore clear that he could not effectively be in control of every single one of these horses. He could not take relevant decisions for each and every single horse for which he was, abstractly and theoretically, registered as Trainer. In addition, he was not present at any of the Events. For these reasons, it was extremely difficult – if not to say impossible – for him to present the factual background of this case or to provide any explanation as to how the Controlled Medication entered the system of the respective Horses.
- 7.3 Pursuant to Article 118.3 of the GRs, which defines the term “Person Responsible”, the Trainer only fell under the definition of “additional Person Responsible” if he “made a relevant Decision about the Horse” or if he was “present at the Event”. It was clear that only if these additional requirements were met, a Trainer may qualify as an additional Person Responsible. The Trainer argued that there was no *per se* qualification as additional Person Responsible, and neither was there in his view a clear criteria which had to be met. For another specific discipline, vaulting, Article 118.3 of the GRs did identify an “irrebuttable presumption”, and the lunger was automatically defined as additional Person Responsible. However, for Trainers in Endurance, this was not the case. It was thus clear that the “automatic” disqualification of each and every Trainer as additional Person Responsible, as suggested by the FEI, was not correct. Moreover, it was clear that the FEI carried the burden of proof to demonstrate that these requirements are met, if it wanted to charge someone like the Trainer as “additional Person Responsible”, and the FEI had not met this burden.
- 7.4 None of the two alternative criteria was met, i.e., the Trainer (i) having been present at the Event; or (ii) having made relevant decisions about the Horse during the Event. The FEI’s reasoning was all too simple saying “he was registered as a Trainer, therefore he took relevant decisions”. However, in his view, if one were to follow the FEI’s logic that each and every Trainer, in each and every case, irrespective of the circumstances, was an additional Person Responsible, this would essentially absolve the FEI from its burden of proof, and would be totally against established principles of disciplinary cases.

- 7.5 According to the principle of legality, the regulatory requirements, based on which a doping sanction is imposed, must be clearly specified in the regulations. Accordingly, whether or not a person is considered as Additional PR, must equally be codified and defined in applicable Regulations. In the Trainer's view such a clear definition exists in this case as mentioned in Article 118.3 of the GRs, and he has not met these criteria, and therefore could not be regarded as an additional Person Responsible. To automatically consider every Trainer as an additional Person Responsible, as the FEI suggests, would require a clear legal basis in the regulations of the FEI, and there was none in his view.
- 7.6 The Trainer further argued that, if one were to automatically consider Trainers as additional Persons Responsible, this would lead to an inadmissible reversal of the burden of proof. As in every disciplinary case, it was the FEI – the sanctioning body – which carried the burden to prove that the Trainer fulfils the regulatory requirements to qualify as an additional Person Responsible. However, the FEI did not provide any evidence that the Trainer was at the Events or took any relevant decision about the concerned Horses.
- 7.7 Moreover, since the Trainer had no control and took no decision about the relevant Horses, he could therefore not be held responsible under the strict liability principle. Furthermore, as a result, no financial sanctions should be imposed on him, and he shall bear no costs connected to the present proceedings.
- 7.8 The Trainer requested the following Prayers for Relief:
- i) Rejecting all charges against Mr. Al Marri;*
 - ii) Establishing that the imposed provisional suspension was unjustified;*
 - iii) In any event, ordering the FEI to bear the costs of the present proceedings and to pay an appropriate contribution towards Mr. Al Marri's legal costs and other expenses related to the present proceedings.*

8. Jurisdiction

- 8.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs. This remains undisputed by the Parties.

9. The Additional Person Responsible, principle of legality and principle of strict liability

- 9.1 To start with the Tribunal notes the background information provided by the FEI as outlined in 5.3c) above. From this background information it

is clear that the FEI General Assembly, when making substantial changes to the Endurance rules, decided for trainers in Endurance to be held additionally accountable – next to the riders – for EADCMRs rule violations, since they were the persons who trained the horses for competitions and took the relevant decisions regarding their preparation.

9.2 In accordance with Article 118.3 of the GRs, Support Personnel may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. Pursuant to the definition of Support Personnel in the EADCMRs, trainers are included in the notion of Support Personnel. Furthermore, the term “Trainer” is defined in the ERs in Article 800.3-4 as *“the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice”*. Therefore, the foregoing provisions when read in conjunction make it clear that Trainers in Endurance make relevant decisions about horses. As a result, the Tribunal finds that the principle of legality is not violated.

9.3 For the Tribunal the above arguments are conclusive, but in this case additionally, as mentioned by the FEI, the Trainer has previously accepted to be the Additional PR in the three prior cases, where he signed a settlement agreement, albeit under a different set of rules. The Tribunal finds that the principle of legality is provided for in the FEI rules – as further outlined throughout this decision –, as well as the Trainer knew or could at least expect that he might be held liable for positive findings of horses he has been training. In the view of the Tribunal the “predictability test” as previously used by various CAS panels is fulfilled in the present case. As an example, one CAS award¹ reads as follows:

“the ‘principle of legality’ (‘principe de légalité’ in French), requir[es] that the offences and the sanctions be clearly and previously defined by the law and preclud[es] the ‘adjustment’ of existing rules to apply them to situations or behaviours that the legislator did not clearly intend to penalize. CAS arbitrators have drawn inspiration from this general principle of law in reference to sports disciplinary issues, and have formulated and applied what has been termed as ‘predictability

¹ CAS 2017/A/5498 Vitaly Mutko v. IOC, award of 3 July 2019 (para 60)

test'. Indeed, CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis and that such sanctions must be predictable. In other words, offences and sanctions must be provided by clear rules enacted beforehand" (see CAS 2008/A/1545 at para. 30; see also CAS 2014/A/3765, CAS 2011/A/2670, CAS 2017/A/5086, among several other CAS awards).

- 9.4 The Tribunal further notes that according to the FEI Database the Trainer was actually the registered Trainer for the Horses at the time of the Events. The Tribunal rejects the argument presented by the Trainer stating that *"he was abstractly and theoretically registered as a trainer"*. The Tribunal further understands that the purpose of registering trainers in the discipline of Endurance is precisely in order to know and if necessary to hold accountable those persons who take the actual decisions of the Horse in preparation for competitions and such registration brings into effect the consequences of the definition of Article 800 of the ERs. This conclusion follows previous decisions made by the FEI Tribunal, such as for example Case 2018/BS18 SHADDAD, Final Tribunal Decision dated 15 August 2019, and Case 2019/CM09 ALRAHAWI, Final Tribunal Decision dated 5 March 2020.

- 9.5 Moreover, the Tribunal echoes the following findings in the *SHADDAD* case (paras 10.2 and 10.3):

"If a trainer is no longer responsible for a horse, or takes no responsibility for the horse in the meaning of Article 800.3-4 of the ERs, the Tribunal would expect such person to no longer be registered as the trainer for that horse. Claims to the contrary cannot be accepted as valid excuses, and can in any case not be considered without any evidence in this regard.

The Tribunal therefore finds the assertion that the Trainer had no decision role in the preparation of the Horse for the Event, and hence no responsibility for the positive finding, without merit."

- 9.6 *In casu*, therefore, if the Trainer accepted to be registered for 154 horses in 2019, he is presumed to have accepted pursuant to Article 800.3-4 of the ERs to be *"the person who is in charge of the preparation of the Horse both physically and mentally for Competition.(...)"*, and therefore he is presumed to have made relevant decisions about these horses, including the Horses in question. The Tribunal would expect that if a trainer does not carry out all tasks himself, he puts procedures in place to be informed and oversee all decisions regarding the horses he is the registered trainer for. Ultimately however, when registering as trainer

for a horse, or a number of horses, this person accepts the responsibilities which come with such a registration, i.e., to be considered as additional Person Responsible pursuant to the GRs and EADCMRs. The Tribunal finds that the provision in the ERs, defining the role of the Trainer, has been precisely put in place in order to avoid the arguments made by the Trainer, namely that he was not responsible and did not take any relevant decisions for the Horses in question. In the view of the Tribunal this provision has been put in place because the FEI expects trainers to take responsibility for all horses they train, regardless of the number of horses, as well as the decisions which might be made by others, such as veterinarians and grooms. And the reason for that is to safeguard the welfare of the horses, one of the statutory aims of the FEI.

- 9.7 Therefore, the Trainer in the case at hand is considered as an additional Person Responsible and the requirement of Article 118.3 of having “made a relevant Decision about the Horse” has been fulfilled. Here the Tribunal wishes to clarify that the relevant Decision about a Horse does not have to be made during the Event, as the Trainer seems to suggest in his Rebuttal submission. Further, as accepted by both Parties, the requirements in this provision are not cumulative, therefore the Trainer did not have in addition to be present at the Events in question in order to be considered as additional Person Responsible.
- 9.8 For the avoidance of any doubt, the Tribunal does not agree with the Trainer’s argument that Trainers in Endurance had to be in addition also expressly listed in Article 118.3 of the GRs, as is the case for lungers, in order to be considered as additional Persons Responsible. The Tribunal comes to this conclusion as Article 800.3-4 of the ERs leaves no doubt that Trainers in Endurance, by definition, take decisions with regard to horses they are the registered Trainers for, and thus they fulfil the requirement of Article 118.3 of the GRs.
- 9.9 Moreover, the Tribunal wishes to clarify that the rules are the same for all trainers in the same discipline, i.e., Endurance, and the Tribunal has to apply the existing and applicable rules, which as previously found hold trainer in Endurance accountable for EADCMRs rule violations. The Tribunal does not find it discriminatory that the same does not apply for trainers in other disciplines. In fact, the rules do not include any provisions for those trainers. In this regard, the Tribunal agrees with the FEI that different rules can and should be applicable where the circumstances so require, and the specifics of trainers in Endurance certainly justify such differences in the rules. The same can be said for the discipline of vaulting where a specific provision exists with regard to the lungeur, who is to be considered as an additional Person Responsible.

In view of the Tribunal equal treatment is not violated if the rules treat all trainers in a specific discipline, similar to all lungers in another specific discipline the same way, which seems to be the case also for trainers in endurance. The fact that each discipline requires specific rules does not change anything in this regard.

- 9.10 In a second step, the Tribunal will decide whether the imposition of the Provisional Suspension in the case at hand was justified and in accordance with the FEI Rules and Regulations, and more specifically the EADCMRs.
- 9.11 Here the Tribunal notes that on 12 February 2019 the Trainer was notified of the positive finding of Horse 1. The Notification Letter of 12 February 2019 further includes the previous violations of the EADCMRs by the Trainer, which violations have not been disputed by the Trainer. Pursuant to Article 7.4.1 (ii) of the ECM Rules the FEI provisionally suspended the Trainer as of the date of notification, i.e., 12 February 2019.
- 9.12 Article 7.4.1 of the ECM Rules mandates a provisional suspension of the registered Trainer following an Adverse Analytical Finding of one (1) Controlled Medication Substance which is not a Specified Substance from an A-Sample, and either a previous violation of the EADCMRs and/or a pending violation of the EADCMRs provided that the registered Trainer was the registered Trainer of that Horse at the time. As the Trainer has not disputed his previous violations, the Tribunal is satisfied that the conditions for imposing a Provisional Suspension on the Trainer were fulfilled. In addition, the provision requires a mandatory Provisional Suspension in those cases. The Provisional Suspension of the Trainer was therefore rightfully imposed by the FEI.
- 9.13 In a further step, the Tribunal has to decide whether the strict liability concept applies in the case at hand. To start with the Tribunal notes that the Trainer was notified via Notification Letter of 12 February 2019 of an apparent violation of Article 2.1 of the ECM Rules, i.e., *The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample.*
- 9.14 Pursuant to Article 2.1.1 of the ECM Rules, *"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 (...)"*.

- 9.15 While the wording of the foregoing provision does not expressly include the word “additional”, the Tribunal finds that this provision must be read together with other provisions that also include additional Persons Responsible, next to the Persons Responsible. The Tribunal comes to this conclusion as firstly the Preface of the EADCMRs refers to Persons Responsible hand in hand with additional Persons Responsible by stating that “Persons Responsible (including additional Persons Responsible, see below) and their Support Personnel accept these Regulations as a condition of participation and involvement in FEI activities and shall be bound by them.”
- 9.16 Furthermore, the *Scope* of the EADCMRs clarifies that “*They must be read in conjunction with the FEI Statutes, General Regulations, Veterinary Regulations, Internal Regulations of the FEI Tribunal, the FEI Standard for Laboratories, and any other applicable rules or regulations.*” Furthermore, Article 15.5 of the ECM Rules clarifies that “*These ECM Rules have been adopted pursuant to the FEI Statutes and General Regulations and shall be interpreted, where applicable, in a manner that is consistent with the applicable provisions of these Statutes and General Regulations as well as other FEI rules and regulation including but not limited to the Veterinary Regulations, the Internal Regulations of the FEI Tribunal, the FEI Standard for Laboratories and the various FEI Sport Rules. In the event of conflict with the Statutes or General Regulations, the Statutes and the General Regulations shall apply, subject however to the application by the FEI Tribunal of the principle of *lex specialis* derogate *legi generali* which provides that a specific provision should govern over a general provision. In the event of conflict with any other rules or regulations, these ECM Rules shall apply.*”
- 9.17 In the present case, as previously established, the relevant provisions are Article 118.3 of the GRs and Article 800.3-4 of the ERs with regard to trainers in Endurance, and the Tribunal considers Article 800.3-4 of the ERs as a *lex specialis* for the discipline of Endurance.
- 9.18 In addition, and most importantly, Article 7.4.1 of the ECM Rules provide for a mandatory Provisional Suspension for Trainers in Endurance for the Presence of a Controlled Medication Substance in the A Sample. It is therefore clear that the FEI may notify the Trainer as additional Person Responsible for an Article 2.1 ECM Rules violation. Following Article 2.1.2 of the ECM Rules a strict liability applies in those cases.
- 9.19 As a final point, the Tribunal also wishes to clarify that the EADCMRs do not exclude that more than one person can be held accountable for the same rule violation, and as previously found, more than one person

might even be held strictly liable for such rule violations, i.e., the Person Responsible and the Additional 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, and where the B-sample is analysed and confirms the results of the A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-samples and B-samples 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 Dexamethasone in Horse 1 with regard to samples taken at Event 1, the presence of Flunixin and Flumetasone in Horse 1 with regard to samples at Event 3, and the presence of Theophylline and Caffeine in Horse 2 with regard to samples taken at Event 2. The Trainer did not challenge the accuracy of the test results and the positive findings. 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. No Veterinary Form existed for any of the substances for either of the Horses.
- 10.2 As a result, the FEI has thus established Adverse Analytical Findings, 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, the Trainer 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 Trainer must establish as a threshold requirement how the Prohibited Substances entered the Horse's system. Furthermore, the Tribunal notes that the Trainer does not claim the applicability of Article 10.6 of the ECM Rules.

- 10.6 The Tribunal takes note that the Trainer has not provided any explanations for the source of the Controlled Medication Substances in either of the Horses and for any of the positive findings. In the absence of establishing on the balance of the probability how the Prohibited Substances entered the Horses' systems, the Tribunal cannot evaluate the degree of fault of the Trainer for the rule violations.
- 10.7 The Tribunal wishes to emphasise that under Article 2.1.1 of the ECM Rules it is the Trainer's personal duty to ensure that no Prohibited Substances are present in the Horses' systems during the Events without a valid Veterinary Form.
- 10.8 In addition, the Tribunal takes note that the present rule violation is not the first rule violation of horses of which he was the Trainer, and therefore finds that Article 10.8 of the ECM Rules is applicable in the case at hand. In fact, the Trainer seemingly was the Trainer of three Horses for which Banned Substance cases have been recorded in the two years prior to this violation. The Tribunal therefore finds the FEI's request for a one-year period of Ineligibility both justified and proportionate. Furthermore, the Tribunal also decides to follow the FEI's suggestion with regard to fines and costs.
- 10.9 Further, the Tribunal notes that Trainer was provisionally suspended from 12 February 2019 until 18 February 2020, and the Tribunal understands that the Trainer respected the Provisional Suspension and was not involved in any capacity while provisionally suspended; at least the Tribunal has not been provided with information otherwise.
- 10.10 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. Sanctions

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on Trainer for the present rule violation shall be one (1) year.
- 11.2 The Tribunal imposes the following sanctions on the Trainer in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The Trainer shall be suspended for a period of **one (1) year**, the period of Provisional Suspension from 12 February 2019 until 18 February 2020 shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the Trainer was eligible since 19 February 2020.

- 2) The Trainer is fined **seven thousand Swiss Francs** (CHF 7,000.-).
- 3) The Trainer shall contribute **three thousand five hundred Swiss Francs** (CHF 3,500.-) towards the costs of these proceedings. In addition, the Trainer shall bear the costs of all B-Sample analyses conducted upon his request.

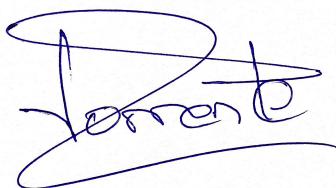
11.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

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 twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL



Mr. Cesar Torrente, one member panel