

**DECISION of the FEI TRIBUNAL**  
**dated 16 April 2020**

**Case:** 2019/FT44

**Horse / Passport:** ESMERALDA/106PQ92/RUS

**Person Responsible/ID/NF:** Elina OFITSEROVA/10140758/RUS

**Event/ID:** CDIYH – Moscow, Otrada (RUS)/2019\_CI\_1320\_D\_YH\_01

**Date:** 30 August 2019 to 1 September 2019

**Prohibited Substance:** 3-Hydroxylicocaine

**I. COMPOSITION OF PANEL**

Ms. Valérie Horyna, one member panel

**II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

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

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

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

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

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Ms. Elina Ofitserova

**3. Justification for sanction:**

**GRs Art. 143.1:** "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-

Doping and Controlled Medication Regulations (EADCM Regulations).”

**GRs Art. 118.3:** “The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunge 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. 7.6.1:** “In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these ECM Rules or (where some discretion as to Consequences exists under these ECM Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”

### III. DECISION

#### 1. Parties

- 1.1 The Person Responsible (“**PR**”), Ms. Elena Ofitserova, is a rider for Russia.
- 1.2 The Fédération Equestre Internationale (the “**FEI**” and together with the PR, the “**Parties**”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian

disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

## **2. Further proceedings**

- 2.1 On 26 March 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2019/FT44 ESMERALDA and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

## **3. Agreement between Parties**

- 3.1 The Parties reached the following Agreement:

\*\*\* Quote\*\*\*

**NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:**

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse ESMERALDA at the CDIYH in Moscow, Russia on 31 August, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

- (a) The PR admits the violations of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*);
- (b) The PR established on a balance of probabilities how Lidocaine entered the Horse's system;
- (c) The PR bears no significant fault or negligence for the Rule Violations and the applicable period of Ineligibility shall be five (5) months, commencing as of the date of the voluntary provisional suspension;
- (d) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Events are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (e) Due to the PR's financial situation the FEI waives the fine;

- (f) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (g) No other Sanctions will apply in this case;
- (h) This violation of the ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.

This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.

The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

\*\*\*End Quote\*\*\*

- 3.2 The Parties provided the following Case Summary and Reasons as part of the Agreement:

"Ms. Elina OFITSEROVA (FEI ID: 10140758), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a rider for Russia.

The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).

The PR participated with the horse ESMERALDA (FEI ID: 106PQ92) (the "Horse") in CDIYH in Moscow, Russia between 30 August and 1 September 2019 (the "Event"). As a member of the Russian Equestrian Federation (the "Russian NF"), the latter being a member of the FEI, the PR was bound by the FEI EADCM Regulations.<sup>1</sup>

The Horse was selected for testing on 31 August 2019. Blood and urine samples were collected from the Horse and sent to the FEI approved

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<sup>1</sup> FEI Equine Anti-Doping and Controlled Medication Regulations 2nd edition, changes effective 1 January 2019

LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.

Analysis of the urine sample revealed the presence of 3-hydroxylicocaine. 3-hydroxylicocaine is a local anaesthetic and also used for the treatment of certain skin diseases. 3-Hydroxylicocaine is a metabolite of Lidocaine. The substance is classified as a Controlled Medication Substances under the FEI Equine Prohibited Substances List.

The positive finding of 3-hydroxylicocaine in the Horse's sample gave rise to a Controlled Medication Rule Violation.

By notification letter dated 24 October 2019, the FEI informed the PR along with the Russian NF of a violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Controlled Medication Rules (the "ECMRs") based on the Laboratory's adverse analytical finding of 3-hydroxylicocaine in the Horse's Sample collected at the Event. (Exhibit 1)

The proceedings were initiated under the so-called Administrative Procedure (also known as "Fast Track") due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to her due to her financial inability to pay the fine and legal costs.

The PR was provided with the right to request a B Sample analysis of the positive sample. The PR did not exercise her right to a B-sample analysis.

On 10 March 2020, the PR submitted a request for Voluntary Provisional Suspension. The FEI provisionally suspended the PR as of that date. (Exhibit 2)

The PR provided her written submission wherein amongst others she explained the following (Exhibit 3-7):

- The PR is a young rider and just started to compete internationally on young and healthy horses;
- The Rule Violation shocked the PR completely as it was the mare's first international competition and the horse was completely healthy. Since the PR rides the horse it was never sick and was never treated for anything;

- Following an investigation, the PR learned that the Groom anointed the Horse's gum with Kamistad gel after the PR's first ride, as the Horse's fangs [teeth] were cutting. The Groom inspected the teeth because the PR following the first ride said that the Horse has teeth problems and the PR had poor contact with the snaffle;
- The Groom found Kamistad gel in the first aid kit;
- The Groom decided to solve the problem and make the PR's riding easier by using the gel on the painful places;
- The Groom stated that she has never before worked at international competitions, and she did not take into account the rules of doping control;
- The Groom didn't even understand that it could make such a serious impact as she had never before worked with riders in international competition;
- Two-three days prior to the Event the PR had a bad toothache and purchased the Kamistad gel in the pharmacy. The PR used Kamistad gel several times a day between 28-30 August 2019 to reduce pain and inflammation;
- The groom knew that the PR used the gel which had been left at the stable;
- It happened because the PR does not have enough experience. The PR completely supports the Anti-Doping rules and would never break them knowingly.
- The PR is regretful for this misunderstanding and asks for forgiveness.

The FEI wishes to emphasize that the PR has been fully cooperative and transparent throughout the lengthy investigation of the source of the Adverse Analytical Finding ("AAF").

Upon initial investigation, the PR submitted to the FEI two potential sources of Lidocaine: human to horse transmission of the Groom's ointment used on her burnt hand or human to horse transmission of Kamistad gel that the PR applied to her gums due to a toothache. The FEI consulted its pharmacological expert to verify the scientific plausibility of the provided potential sources which resulted in the exclusion of both of them, as they were deemed as not likely to have caused the AAF. The ointment that the Groom used for her burns in addition to containing Lidocaine Hydrochloride Hydrate contained

Ofloxacin, an antibiotic. Upon FEI's request the Laboratory confirmed no Ofloxacin was observed in the Sample. With regards to the transmission of Kamistad gel (which contains Lidocain Hydrochlorid) from the PR rubbing her gums with some residual remaining on the PR's fingers, it was deemed as unlikely that a sufficient amount of the gel would end up on the horse's skin and would result in an AAF.

The PR continued with her investigation of the source of Lidocaine.

The PR once more discussed the issue with her Groom who ultimately confessed anointing the Horse's gum with Kamistad gel. The PR explains that the Groom was scared that she could be fired and that's why she didn't tell the truth immediately during their first discussion on how the medication could have ended up in the Horse's system.

The Groom provided her statement, wherein she explains what has happened. (Exhibit 7)

The PR in addition provided a photography of the gel that was used. (Exhibit 6)

The FEI is satisfied that the PR has established, on a balance of probabilities, how Lidocaine entered the Horse's system.

The FEI has proceeded to evaluate the level of Fault or Negligence of the PR.

Despite the Groom administered Kamistad gel on the Horse's gums without the knowledge of the PR, this does not relieve the PR from her personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form.

Similarly, the PR's (and the Groom's) inexperience in international competitions (the Event in question was the PR's first International Competition as per the FEI Database) does not relieve the PR of her duties under the FEI Equine Anti-Doping and Controlled Medication Regulations.

The PR needs to be familiarized with the applicable FEI Rules and Regulations regulating participation in International Competitions before entering into her first competition.

In addition, the PR needs to choose her Support Personnel wisely as any misconduct of the Support Personnel will be imputed to the PR. Namely, the Support Personnel must as well be aware of the applicable

Rules and especially the Equine Anti-Doping and Controlled Medication Rules and its implications.

The FEI has however to a limited extent taken into consideration the PR's inexperience when evaluating her level of Fault or Negligence as inexperience can be regarded as a legitimate cause for not taking all the steps of caution otherwise required from a PR.

In addition, the FEI has taken into account the reason behind the PR's refusal to accept the Administrative procedure namely the PR's financial situation which does not enable her to cover the fine and legal costs of the Administrative Procedure. (Exhibit 8-10)

Viewed in the totality of the circumstances of the case the FEI finds it proportionate to impose a five (5) months Ineligibility Period on the PR, while waiving the fine and legal costs.

Lastly, the PR has in addition agreed to educate herself on the FEI Clean Sport application/website in order to avoid similar situations in the future."

#### **4. Jurisdiction**

- 4.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 4.2 As a member of the National Federation of Russia, the latter being a member of the FEI, the PR is bound by the EADCMRs.
- 4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

#### **5. Approval of Agreement**

- 5.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts that the PR has established the source of the Prohibited Substance.
- 5.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Significant Fault or Negligence for the rule violation, and that the FEI has to a limited extent taken into consideration the PR's inexperience when evaluating her level of Fault or Negligence.



- 5.3 Following from Articles 10.5 of the ECM Rules, where a PR establishes that she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility (6 months) and other sanctions (apart from Article 9) may be reduced. The Tribunal notes that the FEI agreed to reduce the period of Ineligibility of the PR by one month.
- 5.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous case law.
- 5.5 Further, the Tribunal has also taken note that - pursuant to Article 10.10.5 of the ECM Rules - the PR voluntarily provisionally suspended herself since 10 March 2020.
- 5.6 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in point III.3 above. Further, this Decision shall terminate the present case 2019/FT44 ESMERALDA.

## **6. Decision**

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Elina Ofitserova, concerning the case 2019/FT44 ESMERALDA is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

**IV. DECISION TO BE FORWARDED TO:**

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

**FOR THE PANEL**

A handwritten signature in black ink, appearing to be 'Valérie Horyna', written in a cursive style.

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**Ms. Valérie Horyna, one member panel**