

## **DECISION OF THE FEI TRIBUNAL**

**dated 16 June 2020**

**Human Anti-Doping Case No.:** 2019/HD01

**Athlete:** Emma AUGIER DE MOUSSAC

**FEI ID No:** 10017125/CZE

**Event/ID:** CSI3\*-W Designated Olympic Qualifier for Group C – Budapest (HUN)

**Date:** 26-30 June 2019

**Prohibited Substances:** Hydrochlorothiazide

### **I. COMPOSITION OF PANEL**

Ms. Diane Pitts, 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**").

Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 ("**WADA Prohibited List**").

**2. The Athlete:** Ms. Emma Augier de Moussac, represented by Cabinet Biaggi-Benelli, Paris, France.

#### **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).”

**ADRHA Scope:** “These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events. (...)

Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, the following Athletes shall be considered to be International-Level Athletes for purposes of these Anti-Doping Rules, and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (as regards Testing but also as regards TUEs, whereabouts information, results management, and appeals) shall apply to such Athletes who:

- (a) are registered with the FEI; and/or
- (b) participate in an International Event.”

**ADRHA Article 2.1.1:** “It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.<sup>1</sup>”

**ADRHA Article 7.10.1:** “At any time during the results management process the Athlete or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and agree with the FEI on the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping 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 13.2.3 as provided in Article 14.2 and published as provided in Article 14.3.2.”

### III. DECISION

#### 1. The Parties

- 1.1 Ms. Emma Augier de Moussac (the "**Athlete**"), is a jumping rider for the Czech Republic.
- 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. Factual Background

- 2.1 Between 26 and 30 June 2019, the Athlete competed at the CSI3\*-W Designated Olympic Qualifier for Group C in Budapest, Hungary (the "**Event**").
- 2.2 On 28 June 2019, the International Doping Tests and Management (IDTM) on behalf of the FEI collected an In-competition urine sample from the Athlete, which analysis results returned positive for Hydrochlorothiazide (S5. Diuretics and Masking Agent), a Prohibited Substance (Specified Substance), which is prohibited In- and Out-of-Competition pursuant to the 2019 Prohibited List of the World Anti-Doping Agency ("**WADA**").
- 2.3 On 12 September 2019, the FEI notified the Athlete through her National Federation, the National Federation of the Czech Republic (the "**CZE-NF**") of the positive findings (the "**Notification Letter**").
- 2.4 On 9 January 2020, the FEI notified the Athlete that the FEI accepted the Athletes' request of Voluntary Provisional Suspension received on 23 December 2019, and that the Athlete has therefore been provisionally suspended as of this date, i.e., 23 December 2019, in accordance with Article 7.9.5 of the ADRHA.

#### 3. Further proceedings

- 3.1 On 29 May 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2019/HD01 Emma Augier de Moussac and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.10.1 of the ADRHA. On 10 June 2020, the Parties submitted an updated Agreement between Parties.

- 3.2 On 3 June 2020, the FEI Tribunal Chair nominated a one member panel, to which nomination neither party objected.

#### **4. Agreement between Parties**

- 4.1 On 29 May 2020 and on 10 June 2020, the Parties reached the following Agreement:

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

In the matter of the Adverse Analytical Finding related to the samples, which were collected from, Ms. Emma Augier de Moussac at the CSI3\*-W Designated Olympic Qualifier for Group C - Budapest (HUN) from 26-30 June 2019, Ms. Emma Augier de Moussac and the FEI agree, in accordance with Article 7.10.1 (Agreement between Parties) of the ADRHA, on the following:

- (a) The Athlete admits the violation of Article 2.1 of the ADRHA (*The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*);
- (b) The Athlete has established how the Hydrochlorothiazide entered her system;
- (c) The Athlete has established that the violation was not intentional, since the substance was consumed accidentally in a contaminated supplement for weight loss and the standard two (2) years ineligibility period can therefore be reduced;
- (d) The Athlete bears no significant fault and negligence for the rule violation and the applicable period of ineligibility shall be twelve (12) months;
- (e) The ineligibly period to be starting on the date of the sample collection namely 28 June 2019, and ending on 27 June 2020;
- (f) This violation of the ADRHA shall be considered a prior violation for the purpose of Article 10.7 (*Multiple Violations*) of the ADRHA;
- (g) In accordance with Articles 9.1 and 10.1 of the ADRHA the results achieved by the Athlete at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (h) Including the disqualification of any results obtained by the Athlete from sample collection on 28 June 2019 and the

voluntary provisional suspension imposed on 23 December 2019;

- (i) The Athlete shall pay a fine of 2 000 CHF;
- (j) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (k) The Athlete is to fulfil the Education Requirement within a year from the decision of the Tribunal.

The Parties hereby kindly request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

The parties acknowledge and agree that, pursuant to Article 14.3 of the ADRHA, 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. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

This agreement is made in accordance with Article 7.10.1 of the ADRHA 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 13.2 of the ADRHA.

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

- 4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

### **1 CASE SUMMARY**

Ms. Emma Augier de Moussac (FEI ID 10017125), the Athlete under the ADRHA<sup>1</sup>, is a jumping rider for the Czech Republic.

The Fédération Equestre Internationale (the "FEI" and together with the Athlete, 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).

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<sup>1</sup> FEI Anti-Doping Rules for Human Athletes, based upon the 2015 WADA Code, effective 1 January 2015. <http://inside.fei.org/content/anti-doping-rules>

The Athlete participated at the CSI3\*-W Designated Olympic Qualifier for Group C - Budapest (HUN) from 26-30 June 2019 (the "Event"). As a member of the Czech Equestrian Federation (the "CZE NF"), the latter being a member of the FEI, the Athlete was bound by the ADRHA.

A urine sample was taken from the Athlete on 28 June 2019 for in-competition testing under the ADRHA. The sample was sent to the Laboratory for Doping Analysis in Cologne. The Athlete's sample was given the reference number 3136549.

The Laboratory analysed the Athlete's A Sample and reported an Adverse Analytical Finding (AFF) for Hydrochlorothiazide in the urine.

Hydrochlorothiazide is listed in class S5 - Diuretics and Masking Agents, and is considered a "Specified Substance", prohibited in- and out- of competition under the 2019 WADA Prohibited List (the "Prohibited List"). The positive finding of Hydrochlorothiazide in the Athlete's sample gives rise to an Anti-Doping Rule Violation under the ADRHA.

By notification letter dated 12 September 2019, the FEI informed the Athlete, the CZE NF and CZE NADO of a violation of Article 2.1 (*The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Hydrochlorothiazide in the Athlete's Sample collected at the Event.

In accordance with Art. 7.9.2 ADRHA the Athlete was not provisionally suspended, since Hydrochlorothiazide is a Specified Substance. (Exhibit 1-2)

On 13 November 2019, the Athlete submitted her explanation of how the Prohibited Substance entered her body and admitted the Rule Violation. (Exhibit 3)

On 23 December 2019, the Athlete voluntarily accepted a provisional suspension, in accordance with Art. 7.9.5 of the ADRHA, which was acknowledged by the FEI in a notification letter. (Exhibit 4)

On 16 January 2020, the Athlete submitted further information and explanations in relation to her case. (Exhibit 5)

On 4 February 2020, the Athlete and her legal counsel met with the FEI to discuss the case and the Athlete personally explained her case in detail.

The Athlete explained the following: (Exhibit 3 & 5)

- She had tried to lose weight for some time and was looking for a weight loss product for beauty-oriented objectives only. She had talked about this issue with her family and had even considered surgery for this purpose.
- The Athlete's brother in law, had used a weight loss product himself that was really efficient, gave good results without side effects, and therefore recommended this product to the Athlete.
- The Product called "NEW GREEN GOLD"<sup>2</sup>, (the "Product") is a food supplement designed to aid with natural weight slimming to improve your figure. It is sold over the counter in Brazil by the NEW GREEN Company and marketed as a 100% natural food supplement.
- The brother in law explained in his affidavit that he had learned about a Product through advertising on INSTAGRAM and therefore contacted the seller who guaranteed the Product contained 100% natural ingredients, and in addition the seller had taken it himself and had been able to quickly and efficiently lose weight without any side effects. He thus recommended Product, after having tried it himself, to the Athlete who had told him that she wanted to lose weight in order to have more self-confidence. The seller sold him a bottle of the Product on 20 May 2019 for R\$ 250 (Brazilian Reals) when he came to his domicile in Brazil. He supplied the Athlete with the Product, and he gave the bottle he had purchased to the Athlete on 28 May 2019.
- The package leaflet of this Product states that it contains the following ingredients: "*Linhaça, Abacaxi, Alcachofra, Chia, Limão, Maracujá, Gengibre, Psyllium, Macaperuana, Marmelinho, Garcinia, Colagéno e Caralluma*". Neither Hydrochlorothiazide nor any other prohibited substances are listed as ingredients of the Product.
- The Product also has a statement claiming that it is produced in accordance with the law in Brazil<sup>3</sup>, which gives a false impression it is approved by the authorities.
- Upon receipt of the FEI's letter of notice, the Athlete asked the seller of the Product if Hydrochlorothiazide was an ingredient, who admitted to her that the Product could contain traces of

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<sup>2</sup> <https://newgreengold.com>

<sup>3</sup> The product is in accordance with Art 26 of the Decree 79.094/77 law 6.360/76.

Hydrochlorothiazide and that this was not stated in the package leaflet.

- In order to ascertain this fact, the Athlete analysed the Product at a specialised laboratory. The results of the analysis report dated 10 October 2019, show that the presence of Hydrochlorothiazide in this Product was indeed confirmed by the laboratory.
- The laboratory report actually shows that the Product contained several prohibited substances, not only Hydrochlorothiazide, but also Furosemide and Sibutramine, all prohibited substances under the WADA Prohibited List. In addition, the Product contained the pharmaceuticals Ranitidine, Bupropion, Fluoxetine and Diazepam. In fact, the Product was not at all natural and contained mostly produced pharmaceuticals.
- Before using the Product the Athlete checked the security cap of the Product and it had not been opened and looked original. She also did an online check of the Product together with her brother in law who provided the translation as most of the text was in Brazilian. The leaflet and package mentioned nothing about containing any prohibited substances, but only that it was a 100 % natural food supplement. The Athlete checked the online reviews of the Product and it had friendly user advices on its website.
- At the time of the Doping Control performed on 28 June 2019, the Athlete disclosed on the Doping Control Form, that she was under Roaccutane treatment for her skin and also indicated that she was undergoing a course of treatment with the Product a natural food supplement called "NEW GREEN GOLD" and that the last dose she had taken was on the very morning of the Doping Control.
- The Athlete explained that she does not take any medications nor supplements except from sometimes aspirin and vitamin C. She also explained that she is very careful when it comes to the use of drugs, since she has a close family member who had drug problems.
- The course of the treatment with the Product lasted for one month and the Athlete took it orally every morning. It worked well, the Athlete lost weight and felt great. She told both her family and her trainer about it.



- The Athlete expressed that she feels it is a very unfair situation, since the statement claiming that the Product was produced in accordance with the law had given a false impression of that the Product was approved in Brazil, and the list of ingredients did not state any prohibited substances. She was therefore in good faith when using it.
- The Athlete admitted the violation and has been fully cooperative with the FEI.

## **2 THE FULL REASONING OF THE CASE**

### **2A. How the prohibited substance entered the Athlete's body**

The Athlete has explained in detail how the product "NEW GREEN GOLD", a natural supplement which contained Hydrochlorothiazide, caused the Adverse Analytical Finding.

The Product has been analysed at a specialised laboratory and is confirmed to contain Hydrochlorothiazide. The intake of the Product in the morning of the day she was tested, is a plausible explanation of the Adverse Analytical Finding in the Athlete's sample.

The FEI is therefore satisfied that the Athlete has established how Hydrochlorothiazide entered her system.

### **2B. Intent of the rule violation**

The ADRHA Art 10.2.1 states that: "*The period of Ineligibility shall be four years where: The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional ... The anti-doping rule violation involves a Specified Substance and the FEI can establish that the anti-doping rule violation was intentional*" and Art 10.2.2 ADRHA states that: "*If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*" The article provides that if the Athlete can establish that the anti-doping rule violation was not intentional, the sanction shall be two (2) years.

Furthermore, Art 10.2.3 ADRHA explains what needs to be taken into consideration when evaluating the intent. "*The term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.*"

*An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

In the present case, the Athlete explained her use of the Product in order to lose weight for beauty reasons. The Athlete is not overweight, but self-conscious about her body and she explained that she did not use it on purpose to enhance her performance, but with the sole purpose of losing weight. The statement printed on the leaflet claiming that the Product was produced in accordance with the law in Brazil had falsely led her to believe it was an approved product safe to use. The Product is a supplement which contained a Prohibited Substance and the Athlete did not know, although she should have known, that such Product could contain prohibited substances. The fact that the Product is a Contaminated Product per se, is not enough to establish that the conduct was not intentional. However, in this case, she did not know that her ingestion of a supplement could constitute an anti-doping rule violation, although she should have known that there was a significant risk in the conduct of taking a supplement which might result in an anti-doping rule violation, she did not manifestly disregard that risk intentionally. The Athlete has hence established that there was no intent to cheat, but only her wish to lose weight and that she was therefore in good faith when using it.

The substance Hydrochlorothiazide is a Specified Substance prohibited both in- and out- of competition, and the Athlete took it in competition. The FEI is satisfied that Athlete has established that the Product was used for beauty reasons in order to lose weight and that such use was not intentional, in accordance with Art. 10.2.3 ADRHA. The FEI is therefore of the opinion that the Athlete in this case has demonstrated that the ingestion and consumption of the prohibited substance Hydrochlorothiazide was not intentional.

### **2C. Fault and Negligence for the rule violation**

The FEI has proceeded to evaluate the level of fault and negligence for the rule violation.

WADA states in its warning for use of supplements<sup>4</sup> that *"Extreme caution is recommended regarding supplement use. The use of dietary supplements by athletes is a serious concern because in many countries the manufacturing and labeling of supplements do not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of supplements and attributing an Adverse Analytical Finding to a poorly labeled dietary supplement is not an adequate defense in a doping hearing. The risks of taking supplements should be weighed against the potential benefit that may be obtained, and athletes must appreciate the negative consequences of an Anti-Doping Rule Violation as a result of taking a contaminated supplement. Use of supplement products that have been subjected to one of the available quality assurance schemes can help to reduce, but not eliminate, the risk of an inadvertent doping infringement."*

The FEI's is of the opinion and it is also commonly accepted by CAS, that the use of a supplement is regarded as taking a risk and extreme caution is recommended regarding such use, since there is a significant risk that the conduct of using a supplement might result in an anti-doping rule violation. Despite warnings from WADA, NADOs, IFs and NFs, an athlete taking supplements is manifestly disregarding that risk. In other words, an athlete is not considered to have exercised utmost caution when the Adverse Analytical Finding (AAF) is the result of the use of a supplement.

In addition, the rules (Art. 10.4 of the ADRHA) are clear that no fault or negligence cannot apply in cases when an Adverse Analytical Finding is resulting from a mislabeled or contaminated vitamin or nutritional supplement, since athletes are responsible for what they ingest and have been warned against the possibility of supplement contamination. Consequently, an elimination of the period of ineligibility under the provisions for no fault or negligence, Article 10.4 of the ADRHA, can therefore not be applied in the case at hand.

The FEI is however of the opinion that the Athlete has established that she bears no significant fault or negligence, (Art. 10.5 ADRHA) for the rule violation. This article specifically states that sanctions for Specified Substances or Contaminated Products shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's degree of fault.

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<sup>4</sup> <https://www.wada-ama.org/en/questions-answers/prohibited-list-qa#item-1358>

Despite the fact that the FEI considers the Product to be a Contaminated Product,<sup>5</sup> since the Prohibited Substance was not disclosed on the product label, it cannot be ignored that the Product is also a supplement. Athletes are responsible for what they ingest and have been warned against the possibility of supplement contamination, in the FEI's view, the lowest range of sanctions can therefore not be applied in a case when the Contaminated Product is a supplement.

The FEI has looked at similar CAS case law<sup>6</sup>, for guidance to determine the Athlete's level of fault and the proportionate sanction to be imposed for such fault. In cases CAS 2013/A/3075 and CAS 2012/A/2747, the sole arbitrator identified certain steps of caution that an athlete is required to perform before using a supplement such as:

- 1) *The purchase of the Product* - Where was the supplement bought, by whom, and was it bought from a reputable source?
- 2) *The checks performed on the Product* - What checks and research of the supplement was performed before the athlete's use?
- 3) *The consultation with other persons about the Product* - Did the athlete consult any medical staff, i.e. personal doctor, the NADO or NF to learn more about the supplement before the use?

#### The purchase of the Product

The Athlete in this case received the Product from her brother in law, who had bought it directly from the seller and had tried it himself with good results and no side-effects. There is some trust entailed in the fact that the Product was provided by someone she knows and trusted who also had used it himself. The Athlete explained that the statement printed on the leaflet claiming that the Product was produced in accordance with the law in Brazil had falsely led her to believe it was an approved product safe to use. It did not mention that it may contain any prohibited substances, but only that it was a 100% natural product. However, despite that the Product was not purchased on-line or over the counter, there was no guarantee of that the Product which is a supplement, was bought from a reputable source and in addition the

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<sup>5</sup> Definition of Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

<sup>6</sup> CAS 2013/A/3075 World Anti-Doping Agency (WADA) v. Laszlo Szabolcs & Romanian Anti-Doping Agency (RADA), award of 12 August 2013.

CAS 2012/A/2747 World Anti-Doping Agency (WADA) v. Judo Bond Nederland (JBN), Dennis de Goede & Dopingautoriteit (NADO), award of 15 April 2013.

CAS 2010/A/2107 Flavia Oliveira v. United States Anti-Doping Agency (USADA), award of 6 December 2010.

Athlete did not purchase the Product herself.

#### The checks performed on the Product

The Athlete and her brother in law checked the Product online. Her brother in law translated the information of the Product including the ingredients since it was provided in Portuguese only. The list of ingredient suggested that it was a 100% natural product and there was nothing that was suspicious to them. They checked the manufacturer's website and it had good reviews and results. When the Athlete received the Product she also checked that it was sealed and looked original. However, the Athlete did not perform any kind of anti-doping check, since they did not check the Product and its ingredients against the Prohibited List. Neither did they seem to be aware of that a supplement could contain prohibited substances nor that the use of supplements is considered a risk for athletes. It is irrelevant if the ingredient list actually contained any prohibited substances or not, since the Athlete simply failed to perform this necessary duty of care, namely a true anti-doping check of the ingredient list against the Prohibited List.

#### The consultation with other persons about the Product

The Athlete has explained how she and her brother in law consulted the internet for any enquiries about the Product. The brother in law had also contacted the seller directly with his enquiries about the Product. However, the Athlete mentioned that she did not check the Product with any other person such as her personal doctor or her NF and/or NADO, since she believed it was safe to use. It can be expected from a top level athlete who is aiming for the Olympic Games, to be aware of the risk of supplements and to take such measures to assure that the Product is clean before using it in competition and especially at an Olympic Qualifier.

Despite the fact that the Athlete did not have the intent to cheat or enhance her performance and has been very cooperative, the FEI concludes that the Athlete could have taken further steps in order to avoid the anti-doping rule violation. The lower range of the sanction, a reprimand, is therefore not appropriate for this case and the case law shows that there is a medium level of fault and negligence in such a case.

In case CAS 2013/A/3075 the athlete had actually performed steps 1 and 2 (as stated in para 2.14 above) and therefore received a 5 months ineligibility period. In case CAS 2012/A/2747 the athlete had not made any enquires of the product at all, and therefore received an 18 months ineligibility period.

In this case, the Athlete did some parts of steps 1 and 2 above, which led her to believe that the Product was safe to use. However, she did not perform any kind of anti-doping check of the ingredients of the Product. The FEI agrees that the Athlete should have some reduction based on her level of fault and negligence, however, it should remain in the mid-range and cannot be lower than one half of the 2 years, since the Athlete was both at fault and negligent for the rule violation. Although such fault and negligence was not significant, there was still a significant risk that the conduct in using a supplement might result in an anti-doping rule violation and the Athlete manifestly disregarded that risk, perhaps due to her lack of knowledge of the anti-doping rules but still disregarded the risk by ingesting a supplement. She could have and should have taken further steps to avoid the situation, which must be expected from her as a top level athlete.

The Athlete admitted the violation already on 20 September 2019, and provided her explanations as soon as she knew what had happened in her case, on 6 November 2019. The FEI considers this admission as a timely admission in accordance with Art. 10.11.2 ADRHA. The Athlete did not compete between 16 and 26 September 2019. The rules therefore allows for starting the ineligibility period as early as the date of sample collection.

All and every results obtained by the Athlete in the period between sample collection 28 June 2019 and the voluntary provisional suspension imposed on 23 December 2019 shall be disqualified.

To conclude and in line with similar case law, the appropriate and proportionate sanction to be imposed on the Athlete is twelve (12) months ineligibility period.

The ineligibly period to be starting on the date of the sample collection namely 28 June 2019, and end on 27 June 2020.

The Athlete shall in addition pay a fine of 2 000 CHF for the rule violation.

## **2D. Education Requirement**

The Athlete has agreed to either, follow and complete an anti-doping education course such as WADA's ALPHA or equivalent, or an education course provided by CZE NADA and/or by the CZE NF. In addition, the Athlete shall participate in an anti-doping education and share her experience, organised by her CZE NADA and/or by the CZE NF.

These education requirements shall be fulfilled within one year from date of the final decision of the FEI Tribunal. Once such course is

completed the certificate shall be sent to the FEI and the CZE NF/NADO.

Article 7.10.1 of the ADRHA permits for an agreement between the parties, subject to FEI Tribunal approval.

## **5. Jurisdiction**

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the ADRHA, as well as Article 18 of the IRs.
- 5.2 At the time of the Event, the Athlete was registered with the FEI, and participated in the Event, an International Event. Therefore, the Athlete was bound by the ADRHA.
- 5.3 Further, Article 7.10.1 of the ADRHA allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

## **6. Approval of Agreement**

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has taken note that the FEI accepts *inter alia* that the Athlete committed the rule violation inadvertently, *i.e.*, non-intentional, and bore No Significant Fault or Negligence for the rule violation.
- 6.2 Pursuant to Article 10.2.2 of the ADRHA if Article 10.2.1 does not apply, *i.e.*, where the anti-doping rule violation involves a Specified Substance and the FEI cannot establish that the anti-doping rule violation was intentional, the period of Ineligibility shall be two (2) years. Further, pursuant to Article 10.5.1.2 of the ADRHA, where an athlete establishes that she bears No Significant Fault or Negligence and the detected Prohibited Substance came from a Contaminated Product, then, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's degree of Fault.
- 6.3 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the Athlete, nor did it take into account previous case law.
- 6.4 In addition, the FEI accepts that Article 10.11.2 of the ADRHA (Timely Admission) is applicable in the case at hand, and the Parties agreed for

the period of Ineligibility to start with the date of sample collection. The FEI confirms that the Athlete admitted the rule violation promptly, i.e., eight (8) days after having been confronted with the anti-doping rule violation by the FEI. Further, more than one-half of the period of Ineligibility is served from the date the Athlete requested a Voluntary Provisional Suspension on 23 December 2019.

- 6.5 To conclude, the Tribunal finds that the Agreement between Parties falls within the consequences that are mandated by the ADRHA.
- 6.6 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, and to revise the results of the Event accordingly. Further, this Decision shall terminate the present case 2019/HD01 Emma Augier de Moussac.

## **7. Decision**

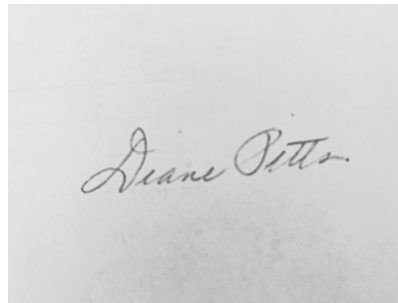
- 1) The Tribunal rules that the Agreement executed by the FEI and the Athlete, Ms. Emma Augier de Moussac, concerning the case 2019/HD01 Emma Augier de Moussac is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 13.2.3 of the ADRHA. 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 14.3.2 of the ADRHA.



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

- a. The Parties: Yes**
- b. The President of the NF of the Athlete: Yes**
- c. The Organising Committee of the Event through the NF: Yes**
- d. Any other: WADA & NADO**

**FOR THE PANEL**

A rectangular box containing a handwritten signature in cursive script that reads "Diane Pitts".

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**Ms. Diane Pitts, one member panel**