



DECISION OF THE FEI TRIBUNAL ON REQUEST FOR EMERGENCY RELIEF

dated 31 May 2010

Disqualification for Hypersensitivity No.: HY2010/01

Horse: SAPPHIRE

FEI Passport No: USA09251

Person Responsible: Mr. McLain Ward, USA

Event: CSI5*- World Cup, Geneva

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo (ISR)

2. HEARING ATTENDEES

The following persons were present at the hearing:

The FEI Tribunal Member Ken Lalo (ISR)

For the FEI (in-person):

Lisa F. Lazarus, General Counsel, FEI

Xavier Favre-Bulle, Lenz & Staehelin, Counsel for the FEI

For the Protesters (in-person):

David Casserly, Lévy Kauffmann-Kohler, Counsel for the PR

Lizzy Chesson, USEF, Director, Show Jumping HP Programs

Timothy Ober, USEF Show Jumping Team, Veterinarian
McLain Ward, Rider U.S.A., Person Responsible for the Horse

For the Protesters (on the phone):

David O'Connor, USEF, President
John Long, USEF, Chief Executive Officer
Sonja Keating, USEF, General Counsel

3. SUMMARY OF THE FACTS

3.1 An Appeal/Protest challenging the 17 April 2010 disqualification of the horse Sapphire (the "**Horse**") from the Event due to hypersensitivity under Annex XI of the FEI Veterinary Regulations, 12th edition, effective 5 April 2010, was filed by David O'Connor, President, United States Equestrian Federation, McLain Ward, rider of the Horse and Person Responsible, and Dr. Timothy Ober, Veterinarian for the United States Equestrian Federation's Show Jumping Team ("**Protesters**") at or about 8:40am CET on Sunday morning 18 April 2010. The Appeal/Protest sought a ruling that: (1) the decision to eliminate the Horse from competition number 13 and from every further competition at the Event must be reversed since the governing FEI Veterinary Regulations were not followed by the FEI appointed Veterinarians and/or the FEI Ground Jury; and (2) the decision of the FEI Ground Jury to retroactively erase the results and competition points earned by the Horse and her rider McLain Ward in the second round of the FEI World Cup was improper and must be overturned.

3.2 An oral hearing was held several hours later on the Geneva horse show grounds at or about 13:00 before the FEI Tribunal. The Parties contemporaneously agreed to limit the scope of the matter requiring an immediate decision by the FEI Tribunal to subsection D of the Protesters "Request for Relief" which sought: "The issuance of at least a provisional order allowing Sapphire and her rider an opportunity to trot up and a chance to compete in the Finals, pending the outcome of the Appeal/Protest since there is (i) the presence of irreparable harm; (ii) the balance of the Parties interests are in [the Protesters] favor; and (iii) that there is a likely chance of success on the merits of the

case.”

4. APPLICABLE STATUTES, REGULATIONS AND RULES

Veterinary Regulations, 12th edition, effective 5 April 2010, Annex X (Bandage Control During FEI Events) & Annex XI (Standard Method of Examination for Hypersensitivity of Legs).

General Regulations, 23rd edition, 1 January 2009, updated 1 January 2010, Articles 159.6.2 & 159.6.4.

FEI Code of Conduct for the Welfare of the Horse.

5. SUMMARY OF THE ARGUMENT

5.1 The Protesters, through their counsel, argued that the jurisdiction of the Tribunal was automatic given the nature of the Appeal/Protest and that the Ground Jury’s decision was appealable, particularly since no decision had been notified to the Protesters. Further, it was argued that the Protocol for Thermography Examination was not applied properly and that it was substantially flawed. Specifically, that a decision was required from the Veterinary Commission and that the Commission at first did not recommend that the Horse was unfit to compete. As a result, it was a major flaw to have the same body that first held that the Horse was fit to compete decide later that the Horse was not fit to compete. With regard to the factors necessary to justify a provisional relief, counsel for the Protesters argued that the Tribunal certainly had jurisdiction for this purpose, that the risk of irreparable harm was great as the winner of the Event stood to earn a major title in addition to the loss of points that would also ensue, that the balance of interests favors the Protesters, and finally that they had set forth a prima facie case on the merits.

5.2 Conversely, the FEI argued that the Tribunal did not have jurisdiction to order the provisional relief as decisions of the Ground Jury were not appealable under Articles 159.6.2 & 159.6 of the General Regulations, especially since they occurred during the field of play. Further, that

the Hypersensitivity Protocol at issue here, which appears as Annex XI to the Veterinary Regulations, specifically provides that “[t]here is no appeal against the decision of the Ground Jury to disqualify a horse for abnormal sensitivity from an event.” The FEI further contended that the Protocol was properly applied and that the right to be heard had been complied with since the Protesters were present at the hypersensitivity examination.

6. DECISION

6.1 On subsection D of the Protesters’ “Request for Relief”, the Tribunal ruled that it did not have jurisdiction to overturn the Ground Jury’s decision on a welfare issue and allow the Horse to compete at the Event. Similarly to decisions taken during the competition and requiring finality, which, even if proven later to be flawed, may not be altered, in horse sports some issues of welfare must be finally decided by the Ground Jury and should not be subject to appeal. Irreparable harm to the rider and horse combination as a result of not being allowed to compete at a major event does not equal the potential risk to the horse and to the sport as a whole if a horse that is evaluated to be hypersensitive is allowed to compete. Hence, the Hypersensitivity Protocol at issue, which appears as Annex XI to the Veterinary Regulations, specifically provides that there is no appeal against the decision of the Ground Jury to disqualify a horse for abnormal sensitivity. There is also no need to show intent or how this abnormal sensitivity may have occurred, but merely to determine that it exists. Arguments regarding the length of the examination and number of times the Horse’s legs were touched do not annul the result, but indicate the seriousness in which the examination was conducted. The Tribunal reasoned that if it allowed the Appeal/Protest to be considered, no decision applying the Hypersensitivity Protocol could be effectively made by the Ground Jury in any future event. The issue of hypersensitivity is a major issue jeopardising the continued success of the sport of Show Jumping. It is an issue that concerns both horse welfare and competition fairness. To combat its potential horrendous effects on the sport as a whole, an examination protocol was developed providing the officials on the ground at the show with tools to take an immediate and final decision to eliminate a horse from

further participation at the event. This is not a matter of conclusive "black and white" determination and may indeed be a subjective determination (as so many sporting decisions are), but is of such key importance to welfare and sporting issues that the finality of such decisions must stand. The Tribunal decided that along with other specified decisions also the decision of the Ground Jury at issue was not appealable including under Articles 159.6.2 & 159.6 of the General Regulations.

6.2 The remaining claims in the Appeal/Protest may be heard by a Final Hearing Panel of the FEI Tribunal on a future date to be agreed upon by the Parties.

7. DECISION TO BE FORWARDED TO:

7.1 The protesting Parties: Yes

7.2 The President of the Organising Committee of the Event through his NF: Yes

7.3 Any other: No

FOR THE PANEL

A handwritten signature in blue ink that reads "Ken Lalo". The signature is written in a cursive style with a long horizontal stroke at the end.

Ken E. Lalo