



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2006/A/1046

**Lazar & Brasseur & Organizing Committee of the 2004 World Driving
Championship & HEF & FRBSE v/ FEI & Freund & GEF**

ARBITRAL AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Raj **Parker**, Solicitor Advocate, London, England

Arbitrators: Mr Quentin **Byrne-Sutton**, Attorney-at-Law, Geneva, Switzerland

Mr Otto L.O. **de Witt Wijnen**, Attorney-at-Law, Rotterdam, Netherlands

in the arbitration between

ZOLTAN LAZAR, Godollo, Hungary

& FELIX MARIE BRASSEUR, Belgium

& THE ORGANISING COMMITTEE OF THE 2004 WORLD DRIVING CHAMPIONSHIPS, Kecskemet, Hungary

& HUNGARIAN EQUESTRIAN FEDERATION, Budapest, Hungary

& FEDERATION ROYALE BELGE DES SPORTS EQUESTRES, Brussels, Belgium

represented by Mr Antonio Rigozzi of Schellenberg Wittmer, Attorneys-at-Law in Geneva, Switzerland

- Appellants -

- and -

FEDERATION EQUESTRE INTERNATIONALE, Lausanne, Switzerland

represented by Dr Xavier Favre-Bulle and Mr Charles Sulmoni of Lenz & Staehelin, Attorneys-at-Law in Geneva, Switzerland

& MICHAEL FREUND, Dreieich, Germany

represented by Dr Dietrich Plewa, Rechtsanwalt, Plewa & Doppler, Germersheim, Germany

& GERMAN EQUESTRIAN FEDERATION, Warendorf, Germany

represented by Dr Joachim Wann, Head of Legal Department, German Equestrian Federation

- Respondents -

IN FACT

1. PARTIES CONCERNED

1.1 Mr Zoltan Lazar (*Lazar*) is a four-in-hand driver and represents Hungary in driving competitions. Lazar is also a registered member of the Hungarian Equestrian Federation (*HEF*).

1.2 Mr Félix Marie Brasseur (*Brasseur*) is a four-in-hand driver and represents Belgium in driving competitions. Brasseur is also a registered member of the Fédération Royale Belge des Sports Equestres (*FRBSE*).

1.3 The Organising Committee of the 2004 World Driving Championships (the *OC*) was responsible for the organisation of the 2004 FEI World Driving Championship (the *2004 Championships*) which took place at Kecskemet, Hungary from 4 to 8 August 2004. The OC comprised Mr Péter Medgyessey, the Prime Minister (representing the State of Hungary) and Mr. László Balogh, Mr Zoltán Kovács and Dr. Károly Fehér (all representing the HEF).

1.4 The HEF is the body that represents equestrian sports in Hungary. The HEF is also a member of the Fédération Equestre Internationale (*FEI*).

1.5 The FRBSE is the body that represents equestrian sports in Belgium. The FRBSE is also a member of the FEI.

1.6 Mr Michael Freund (*Freund*) is a four-in-hand driver and represents Germany in driving competitions. Freund is also a registered member of the German Equestrian Federation (*GEF*).

1.7 The FEI is the international body that governs equestrian sport. The purpose of the FEI is to be the sole authority for all international equestrian events, by establishing rules and regulations for the conduct of international events. The FEI is also responsible for judging, stewarding, course design, veterinary matters and anti-doping controls at international equestrian events.

1.8 The GEF is the body that represents equestrian sports in Germany. The GEF is also a member of the FEI.

2. BACKGROUND

2.1 The 2004 Championships took place in Kecskemet, Hungary from 4 to 8 August 2004 and were organised by the OC.

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2.2 During the event, stables were erected for horses taking part in the competitions. Horses were also allowed to graze in a marked field located in the vicinity of the stables.

2.3 On 8 August 2004, Freund won the Individual Four-in-Hand competition and therefore won the gold medal. Lazar won the silver medal and Ysbrand Chardon, representing the Netherlands, the bronze medal. Brasseur came fourth in the competition.

2.4 On the same day as Freund's victory, one of the horses that had formed part of Freund's team of four horses, Mary 64, was selected for urine sampling. Three samples were taken, including A and B samples, and the process was conducted according to all applicable standards. Mary 64 was one of twelve horses selected for testing, which also included Zidane, part of Ysbrand Chardon's team of horses and Quijote, which was part of Brasseur's team.

2.5 On 6 September 2004, the A sample from Mary 64 was confirmed as containing valerenic acid. The analysis of the sample was conducted by the FEI's approved Central Laboratory, the Laboratoire des Courses Hippiques, France (*LCH*). The LCH confirmed that the analysis was conducted properly and in accordance with internationally accepted practices.

2.6 Valerenic acid is a product of the *valeriana* genus of plants and acts as a sedative on, *inter alia*, the nervous system. Consequently, it is deemed a prohibited substance under the FEI Veterinary Regulations (20th edition effective April 2001) (the *Veterinary Regulations*). Valerenic acid has been graded 3 by the Medication Sub-Committee of the FEI. Under this grading system, a grade 1 indicates that the substance has a high potential to affect a horse's performance and a grade 5 would indicate that the substance had a relatively low potential to affect a horse's performance.

2.7 On 6 October 2004, the FEI notified the GEF, as Freund's national federation, of the positive result of the A sample. As a result, Mr Freund was also notified of his procedural rights through the GEF. On 12 October 2004, Freund confirmed that he wished the B sample to be tested, and named a witnessing analyst to be present at the analysis of the B sample.

2.8 During the time in which the B sample was sent for testing, Freund, his representative, his groom and experts commissioned by him went back to Kecskemet and the grazing field. They picked some samples of plants growing there and also took photographs of the area.

2.9 On 26 October 2004, Freund wrote to the FEI informing it that a plant that contained valerenic acid, *valeriana officinalis*, could be a common plant in Hungary and that Mary 64 had probably ingested this plant while grazing outside the stable during the 2004 Championships.

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2.10 On 4 November 2004, the Hong Kong Jockey Club (*HKJC*) confirmed that the analysis of the B sample showed the presence of valerenic acid. The HKJC confirmed that the sample had been stored inside a security plastic bag, there was no sign of any tampering with the security plastic bag and that the testing had been carried out by accredited, in-house methods.

2.11 On 11 November 2004, Freund was asked to submit a written explanation for the positive test result to the FEI within fifteen days. Following an extension of the deadline, Freund filed his defence statement with the FEI on 14 December 2004.

2.12 On 21 April 2005, the FEI referred the case to the FEI Judicial Committee (the *JC*). An initial hearing was conducted on 29 June 2005, but the *JC* adjourned the proceedings in order for a controlled experiment to be carried out on a horse where appropriate quantities of a plant called *centranthus ruber* (which Freund had submitted was the plant at Kecskemet which contained valerenic acid) would be fed to the horse, with urine tests carried out throughout the experiment.

2.13 The FEI attempted to co-ordinate with Freund how the experiments ordered by the *JC* were to be carried out. On 17 August 2005, Freund informed the FEI that he had arranged for his own tests to be carried out with no involvement from any representatives of the FEI. The FEI therefore commissioned its own experiments. On the same day, Freund submitted the results of an experiment carried out by Dr Bernhard Pötsch to the FEI. During this test, *centranthus ruber* picked on the Italy-Slovenia border was fed to Mary 64 over a period of five days. On the fifth day, a urine sample was taken and sent to LCH. Upon analysis of the sample, the laboratory confirmed the presence of valerenic acid. However, a further experiment carried out by Dr Pötsch using plants obtained from Austria and Germany showed no presence of valerenic acid in the horse's urine.

2.14 From 1 to 6 September 2005, Freund commissioned a further experiment, which was carried out by Dr. J.C. Merkt. One horse was fed *centranthus ruber* over a period of seven days. Urine samples were taken on days one, five and six of the experiment. The samples were sent for analysis both to LCH and a laboratory in Cologne, Germany. Both laboratories produced the same results: the samples on day one tested negative for valerenic acid, whereas those on days five and six of the experiment tested positive.

2.15 The FEI also decided to undertake several tests. It instructed Professor Dr. Coenen to commence its first test on 22 August 2005, for which five horses were selected, with one horse being fed *centranthus ruber* bought in a garden centre in Hanover, Germany, over two days. Urine samples from the horse were taken to LCH for analysis and samples of *centranthus ruber* fed to the other horses were also sent to LCH. All of the test results revealed no valerenic acid present in the horses.

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2.16 From 12 to 16 September 2005, a second experiment was carried out on behalf of the FEI, this time by Dr. Jármy Miklós. Two horses were selected for the experiment, and were fed *centranthus ruber* from a garden centre in Budapest, Hungary, over a period of two days. Both the urine samples from the horses and also samples of the *centranthus ruber* fed to the horses were sent to LCH for analysis. No valerenic acid was found in any of the horses or plant samples tested.

2.17 The FEI also commissioned two botanical reports on *centranthus ruber*. On 6 September 2005, Dr Sabine Aboling reported that *centranthus ruber* does not contain any valerenic acid. On 11 November 2005, Professor Dr Jenő Bernáth reported that *centranthus ruber* does not grow indigenously in Kecskemet, Hungary, owing to the climate in that region. In addition, Dr. Bernáth reported that there was no reliable data concerning the presence of valerenic acid in the above-ground part of *centranthus ruber*, and that, if it were present at all, it would be in a low quantity.

2.18 The JC resumed proceedings on 23 January 2006 and delivered its final decision (the *Decision*). The JC (by a 2:1 majority decision) decided to terminate the proceedings in this case pursuant to GR146.2 of the FEI General Regulations (20th edition, effective April 2001) (the *General Regulations*), thereby allowing Freund to retain his gold medal and World Championship title.

2.19 On 27 February 2006, the Appellants appealed to the Court of Arbitration for Sport (*CAS*) against the Decision.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS

The Parties

3.1 On 5 April 2006, Freund was admitted as a Respondent to the Appeal.

3.2 By a Procedural Order of 27 June 2006, the President of the Panel admitted the GEF as a Respondent to the Appeal.

The Order of Procedure

3.3 On 21 July 2006, the CAS, on behalf of the Panel, issued an Order of Procedure, which was subsequently accepted and countersigned by all parties.

The Hearing

3.4 Under R44.2 of the Code of Sports-related Arbitration (the *Code*):

“After consulting with the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.”

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3.5 In the appeal brief of 9 March 2006 and Answer to the Appeal of 28 April 2006 respectively, the Appellants and the FEI indicated that they were content to allow the Panel to issue an award on the sole basis of the written submissions.

3.6 In the Procedural Order of 27 June 2006, the President of the Panel invited Freund and the GEF to indicate whether they were available for a hearing on the 26 and 27 July 2006. In a letter of 28 June 2006, Freund indicated that he was unavailable on the dates specified in the Procedural Order. In a letter of 3 July 2006, the GEF indicated that it was content to agree with Freund's decision on any request for a hearing.

3.7 Therefore the Panel, deeming itself sufficiently well-informed, decided that it was not necessary to hold a hearing in this matter.

LAW

4. PROCEDURAL ISSUES

Jurisdiction

4.1 Under R.47 of the Code:

“An appeal against the decision of a federation, association or sports related body may be filed with the CAS insofar as the statutes or regulations of the said bodies so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports related body. An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure or first instance.”

4.2 The jurisdiction of the CAS derives from Article 59 of the FEI Statutes (21st edition, effective 21 April 2004) (the *FEI Statutes*) and Section II of the Schedule to the 2004 Championships (the *Schedule*). In the Order of Procedure, all parties agreed that the CAS had jurisdiction to hear the appeal from the Decision.

4.3 It follows that the CAS has jurisdiction to decide the present dispute.

Applicable Law

4.4 Under R.58 of the Code:

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“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled and according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

4.5 Further, Article 59 of the FEI Statutes provides as follows:

“...The parties concerned acknowledge and agree that the seat of the Court of Arbitration is in Lausanne, Switzerland and that procedures before the Court of Arbitration are governed by Swiss Law.”

4.6 In the present matter, the parties have not agreed on any particular law to govern the appeal proceedings. Therefore, the rules and regulations of the FEI shall apply primarily and Swiss law shall apply complementarily.

5. THE PARTIES' SUBMISSIONS

The Appellants

5.1 This is a summary of the submissions made in the Appellants' appeal brief of 9 March 2006 and additional brief of 28 March 2006.

5.2 GR170.1 of the General Regulations provides that:

“An Appeal may be lodged by any person or body with a legitimate interest against any decision made by any person or body authorised under the Statutes, Regulations or Rules...”

5.3 The Appellants cite the recent CAS award in *CAS 2005/A/895 Barbara Lissarague, Fédération Française d'Équitation, Emirates International Endurance Racing and the Organising Committee of the FEI Endurance World Championship 2005 v FEI and HH Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan* (the *Sheikh Hazza* case). This case confirms that drivers whose medal and prizes could be affected by the decision under appeal have a legitimate interest and therefore standing to appeal before the CAS. To reinforce this, in *CAS 2002/O/373, Canadian Olympic Committee & Beckie Scott v International Olympic Committee*, the Panel stated that *“it is difficult to imagine an interest more worthy of protection than the interest of an athlete in securing an Olympic medal which she/he considers to have won fairly.”* This concept should also apply where a World Championship medal is at stake. Therefore, both Lazar and Brasseur have standing to appeal in this case

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5.4 The *Sheikh Hazza* case also confirms that this principle extends to national federations. Therefore, as Lazar's national federation, the HEF also have standing to appeal. Although the award mentions the situation where a gold medal is at stake, a bronze medal has similar repercussions and therefore the FRBSE should have an equal legitimate interest and therefore it has standing to appeal.

5.5 Although the *Sheikh Hazza* case decided that a local organising committee does not have a legitimate interest to appeal on the grounds that to appeal would impair the organising committee's neutrality, this case can be distinguished from the situation in *Sheikh Hazza*. The OC has a legitimate interest to appeal in that it wishes to restore the sporting integrity of the event that it organised, and there is no issue of whether the OC is failing to remain neutral.

5.6 It has not been disputed at any point that Mary 64 tested positive for valerenic acid. Therefore the disqualification of Freund and Mary 64 is automatic under the FEI's rules and regulations and all of the factual evidence provided by Freund at the hearings of the JC and before the CAS is irrelevant.

5.7 GR146.2 of the General Regulations states:

“Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event as the result of a Medication Test, is automatically disqualified, together with the competitor with that horse, from all competitions at the event and the classification adjusted accordingly, unless the Judicial Committee decides based on the evidence provided to terminate the proceedings of the case...”

5.8 The JC in the Decision stated that the proviso available in GR146.2 *“should have a narrow interpretation and be applied in exceptional cases, such as one involving procedural errors which undermine the validity of the test results.”*

5.9 The Appellants state that the JC was correct in its interpretation of the proviso in GR146.2, and that this is consistent with other jurisprudence available concerning the exception in GR146.2. However, the JC was wrong to apply the proviso in this case, as there were no procedural errors in carrying out the tests and Freund's rights during the process were not violated.

5.10 The Appellants state that the CAS has already confirmed that automatic disqualification will apply, even where the prohibited substance had no influence on the performance of the horse or where the rider was wholly innocent, e.g. *CAS 94/126 N[agel II] v/ FEI*. The Appellants point to the recent decision of the CAS in *CAS 2005/A/829 Ludger Beerbaum v. FEI* (the *Beerbaum* case) as confirming the principle of automatic disqualification. Therefore, as there have been no procedural irregularities in this case, and the positive test has not been disputed, the strict liability principle should apply in this case.

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5.11 The FEI has committed itself to adopt the WADA World Anti-Doping Code (the *WADA Code*). Articles 2 and 9 of the WADA Code (which provide for automatic disqualification and strict liability irrespective of fault) are “mandatory provisions” which must be incorporated into the relevant rules of each member organisation. The provisions of the WADA Code confirm that the principle of automatic disqualification should apply in this case. Even if the FEI has not incorporated the WADA Code into its own regulations, the Appellants submit that CAS caselaw in, for example, *CAS JO-ATH 04/03 Edwards v IAAF & USATF* states that a clear mandatory provision of the WADA Code will override any offending provision in an international federation’s own regulations. Therefore, this provides compelling evidence that only a narrow interpretation of the proviso in GR146.2 should apply in this case.

5.12 The evidence supplied to the JC did not establish that the cause of the positive test for valerianic acid in Mary 64 was ingestion of *centranthus ruber*. Indeed, the Decision highlighted the lack of clarity in the scientific evidence by using such phrases as “the plant, apparently *Centranthus ruber*, was found subsequently at the location where the horse had grazed,” and “*Centranthus ruber* can contain valerianic acid.”

FEI

5.13 This is a summary of the submissions made in the FEI’s Answer to the Appeal of 28 April 2006.

5.14 All five appellants must show that they have a “*legitimate interest*” to appeal the Decision. The *Sheikh Hazza* case confirmed the standing to appeal of a competitor who has been deprived of a gold medal, and his national federation. The FEI doubts whether, on the basis of this decision, whether Brasseur and the FRBSE have standing to appeal, as the decision is silent on whether competitors other than the one standing to obtain a gold medal should be entitled to challenge a decision of the JC. The FEI submits that obtaining a bronze medal is an important matter for a competitor and his national federation and is content for the Panel to decide on this matter.

5.15 The FEI submits that, as a result of the *Sheikh Hazza* case, the OC has no standing to appeal. The *Sheikh Hazza* case established that a local organising committee would not have legitimate interest to appeal as it should preserve neutrality between competitors. Although the OC states that its participation in this appeal does not entail a failure to remain neutral, the FEI submits that, by appealing together with two competitors and their national federations, with the same counsel, it is difficult for the OC to claim that it remains neutral.

5.16 The FEI states that the presence of a prohibited substance in a horse’s system will automatically entail disqualification, irrespective of any absence of fault on the part of the driver. Freund has not

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disputed the positive test for valerianic acid nor has he raised any objections regarding the testing procedure. Therefore, the offence of doping has been objectively proved.

5.17 Although Freund submitted that the JC should terminate the proceedings of the case despite the presence of the prohibited substance, on the grounds that the positive test was the result of factors outside of his control, there is significant doubt as to:

- the presence of *centranthus ruber* at the site of the event;
- whether valerianic acid can be found in *centranthus ruber* at all; and
- even if valerianic acid could be found in *centranthus ruber*, whether ingestion of the plant could produce a positive result.

5.18 The JC admitted that Freund's submissions on *centranthus ruber* were assumptions rather than objective fact and highlighted this in its decision by using words such as "apparently" and "can contain" and that the case is "an extremely difficult case to assess in light of the varying technical advice furnished." The Panel of the JC was not unanimous in its decision to terminate the proceedings of the case, which highlights its complexity. Therefore, the Decision should be annulled and Freund should be disqualified from the 2004 Championships.

Freund

5.19 This is a summary of the submissions made in Freund's Answer to the Appeal of 26 April 2006.

5.20 Freund states that this appeal should only be heard by the CAS on the basis of Article 59, para 4.2 of the FEI Statutes. The Appellants could all have appeared before the JC and presented their case at the original hearing. As they have given no reason for not doing so, they have no standing to appeal in this case pursuant to Article 59 of the FEI Statutes.

5.21 The HEF, FRBSE and the OC should not have standing to appeal in this case. The OC has not suffered any detriment from the JC's decision. The HEF and FRBSE also do not have standing to appeal, as the JC's decision was with reference to an individual title won at the 2004 Championships, rather than a team title.

5.22 The *Sheikh Hazza* case and the *Berbaum* case are not relevant in this case and can be distinguished. There were no errors in the testing procedure, unlike in the *Sheikh Hazza* case, nor was there any administration of a prohibited substance, as in the *Berbaum* case.

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5.23 The proviso contained with GR146.2 provides the JC with its own scope of interpretation and discretion on the appropriate circumstances in which it can use the proviso. Therefore, the Appellants can only succeed in this appeal if the JC's reasons for using the proviso can be shown to be arbitrary, violate rules of logic or principles of the Swiss Civil Code.

5.24 Freund submits that the Decision was correct as the positive result for valerenic acid had no enhancing effect on Mary 64's performance and that to administer such a sedative would have been counterproductive, as Mary 64 was an experienced horse that was used to the pressures of competition. Freund submits therefore that this is not a case of doping at all, as Mary 64 did not ingest the substance intentionally or even negligently. Indeed, the horse was properly cared for throughout the competition. Further, Freund would never knowingly allow his horse to compete in competition with a prohibited substance in its system, as this is wholly contradictory to his attitude to his sport. This case does not fall within the aims of anti-doping provisions and therefore the decision of the JC to terminate the proceedings of this case was justified.

5.25 Freund states that the FEI is subject to the application of the Swiss Civil Code. Freund further points to a judgment of the county court of the Tribunal d'arrondissement de la Broye et du nord vaudois of 21 December 2005 in which it was stated, with reference to Article 28 of the Swiss Civil Code, that "*it is not permissible to pronounce doping sanctions on the basis of an irrefutable assumption according to which the proven substance has affected the performance of the horse in spite of its existing volume.*" Therefore, any other decision reached by the JC would have contravened the Swiss Civil Code.

GEF

5.26 This is a summary of the submissions made in the GEF's Answer to the Appeal of 3 July 2006.

5.27 The GEF submits that the JC made use of the proviso in GR146.2 correctly, as the proviso provides the JC with a discretionary power. The exercise of this power can only be reviewed in a limited way, where the power was used arbitrarily, offended the rules of logic or was contrary to the principles of Swiss law.

5.28 The reasons with which the Appellants have challenged the reasoning of the JC are unfounded. The FEI is an autonomous body and therefore interpretation of a FEI regulation by reference to, for example, CAS caselaw and the WADA Code is not appropriate. The meaning of the proviso is clear, that is "*to terminate the proceedings of the case if sufficient evidence is provided.*" No further interpretation is necessary.

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5.29 The Schedule states that there was a recommendation for drivers to establish a grazing area for their horses. Therefore, the question that the CAS must answer is whether Freund could have trusted that the safety provided in respect of the grazing area at Kecskemet would not be detrimental to him, if he allowed his horse to graze in that area. This is especially important in that the CAS has already determined, in *CAS 2000/A/275*, that “*the rider remains responsible for the supervision of the horse; a fault of the Person Responsible can not be excluded just because of lack of stable security.*”

5.30 CAS only has jurisdiction where Freund can be blamed for having made a mistake, which is doubtful in this case. Valerenic acid was found in the horse’s system as a result of ingesting *centranthus ruber* that grew on the grazing area. Freund should not be held responsible but rather should be able to trust the OC to provide a grazing area that was not contaminated by a prohibited substance.

5.31 Therefore, as the fault in this case lies wholly with the OC, rather than Freund, who had no reason to exercise more care than he would ordinarily in competitions, the principle of automatic disqualification should not apply in this case. Terminating the proceedings in this case as a result of the exceptional circumstances would not thwart anti-doping policy in sport.

6. THE PANEL’S CONCLUSIONS

6.1 The main issues to be resolved by the Panel are:

- (a) Do the Appellants have a legitimate interest to appeal the Decision?
- (b) Was there a doping offence for which Freund is liable?
- (c) How should the proviso in GR146.2 be interpreted and did the JC make use of the proviso correctly?
- (d) Possible sanctions.

(a) Legitimate interest of the Appellants

6.2 GR170.1 states that any person or body appealing a decision of the JC must have a “*legitimate interest*” to appeal. The Panel in the *Sheikh Hazza* case considered that where an athlete stands to obtain a gold medal this provides the athlete with a “*legitimate interest*” to appeal pursuant to GR170.1. This Panel agrees with the reasoning in *Sheikh Hazza* and therefore finds that Lazar has standing to appeal in this case. With regard to the “*legitimate interest*” to appeal of an athlete’s national federation, the Panel in *Sheikh Hazza* stated that “*...[a national federation] has a direct sporting interest to support its athlete*” and that:

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“...it is of great importance for a national federation to have one of its members become a World Champion. In terms of publicity, media coverage and direct as well as indirect repercussions, a gold medal and a World Champion title have a financial impact for a national federation that cannot be matched by a silver medal.”

This Panel agrees with this reasoning while considering there may be additional worthy interests involved, such as that of a national federation promoting and strictly defending on all occasions, for its own benefit and that of its members, an anti-doping policy, which implies not tolerating any results that are deemed tainted by doping. Therefore, this Panel finds that the HEF, as Lazar's national federation, also has a legitimate interest to appeal the Decision.

6.3 The *Sheikh Hazza* case does not address the issue of whether an athlete who stands to win a medal other than gold has a legitimate interest to appeal the Decision. For many athletes, the opportunity to win a medal of any description at a World Championship represents the pinnacle of a career. In the case of Brasseur, who came fourth, the difference between being placed fourth and obtaining a bronze medal is significant in terms of personal satisfaction, prestige and publicity. Therefore, since this Panel's decision could affect Brasseur obtaining a medal or not, it finds Brasseur has a legitimate interest to appeal the Decision.

6.4 For the same reasons indicated above with respect to the HEF, which remain relevant where a national federation's member stands to gain a bronze medal and a matter of doping is involved, the Panel finds that the FRBSE, as Brasseur's national federation, also has a legitimate interest to appeal the Decision.

6.5 In *Sheikh Hazza* it was held that the local organising committee did not have a legitimate interest to appeal the decision of the JC as it was *“not sufficiently affected by the disputed Decision and has no tangible interest at stake in this appeal procedure.”* In this case, the Panel finds that the OC has not sufficiently established any particular and independent interest under GR170.1 in appealing the Decision. Consequently, the Panel finds the OC has no standing to appeal.

(b) Was there a doping offence for which Freund is liable?

6.6 The first element of GR146.2 states that:

“Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event as a result of a Medication Test, is automatically disqualified, together with the competitor with that horse, from all competitions at the event and the classification adjusted accordingly ...”

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This is reinforced by the provisions of the Veterinary Regulations. In particular, VR1006.8 states that:

“The Person Responsible is liable to the appropriate penalties under the Statutes and the General Regulations for any violation of these Regulations, in particular if a sample from the horse for which he/she is responsible shows, at the time of the event, the presence of a prohibited substance in the horse’s tissues, body fluids or excreta.”

In view of the foregoing provisions and considering valerenic acid is a prohibited substance and it is undisputed that it was present in Mary 64’s system when testing was carried out after the 2004 Championships, the Panel finds that the offence under GR146.2 and VR1006 has been established.

(c) Can the proviso in GR146.2 be used in this case?

6.7 There is a proviso in GR146.2 stating that the offence is established upon the presence of a prohibited substance *“unless the Judicial Committee terminates the proceedings of the case.”* Confusingly, the JC in its Decision does not clearly state how it interpreted the proviso and why it chose to exercise the proviso in this case, since, on the one hand, the Decision states that *“... the proviso should have a narrow interpretation and be applied in exceptional cases, such as one involving procedural errors which undermine the validity of the case results”* while, on the other, the Decision neither refers to any procedural errors nor indicates what it deems to be exceptional circumstances.

6.8 Given the unusual character and vagueness of the proviso and the strict content of the FEI regulations with regard to the automatic disqualification of the Person Responsible when a Prohibited Substance is found in the horse’s system, the Panel concurs with the JC in considering that the proviso must receive a narrow interpretation. Moreover, it is noteworthy that by deleting the proviso from the new edition of its General Regulations currently in force, the FEI has gone one step further in recognizing that the proviso did not fit with the principle of automatic disqualification provided in the regulations.

6.9 The question remains what is the outcome of a narrow interpretation. In the *Beerbaum* case, the Panel decided upon a narrow interpretation of this GR146.2 proviso and determined in essence that the only circumstances in which the proviso could be used would be where it could be established there was no prohibited substance in the horse’s system or where on account of a procedural error the test should be disregarded.

6.10 In *Beerbaum*, the Panel put much emphasis on the need to preserve the principles of strict liability and automatic disqualification unless a clear exception is allowed in the applicable regulations.

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6.11 The Panel agrees with the reasoning in *Beerbaum* and considers that no clear exception can be found in the FEI rules. On the contrary, as indicated above, GR 146.2 and VR1006.8 very much re-confirm the principles of strict liability as does GR 174 § 6.2, the latter rule allowing a lower penalty to be applied if a lack of deliberate intent is proven but requiring the sanction of disqualification to remain.

6.12 The Panel considers furthermore that it is particularly difficult to admit any exceptions to the sanction of disqualification where the presence of the substance is undisputed and its potentially enhancing effect is not disproved. The WADA Code which the FEI adopted prior to the 2004 Olympic Games in Athens and which also applies to the doping of horses, makes this principle clear in that automatic disqualification arises from the mere presence of the prohibited substance. It would be unfair to the other athletes in the competition if an athlete who was not “clean” could retain his or her ranking in the competition, despite the presence of a prohibited, performance-enhancing substance. In the official comment to Article 2.1.1 of the World Anti-Doping Code, wherein, quoting the words of the Panel in *CAS 94/129 Quigley v UTT*, it is stated that:

“The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable Persons, which the law cannot repair. Furthermore, it appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors. This is what would happen if banned performance-enhancing substances were tolerated when absorbed inadvertently. Moreover, it is likely that even intentional abuse would in many cases escape sanction for lack of proof of guilty intent.”

6.13 For the above reasons, the Panel finds that the proviso in GR146.2 cannot have been designed to allow an exception in a case such as this one, in which the finding of a prohibited performance-enhancing substance is not disputed.

6.14 *A fortiori* the proviso in GR146.2 cannot have been designed to apply in cases where it is not clearly established by what means the performance-enhancing substance entered the horse’s body. In this relation, the Panel considers that given the very conflicting scientific evidence adduced by the parties - regarding, among others, the presence of *centranthus ruber* at Kecskemet, whether the plant could have contained valerenic acid and whether its ingestion could cause a positive test result - Freund has not been able to conclusively prove that the reason for the presence of valerenic acid in Mary 64’s system was the result of ingestion of *centranthus ruber*.

6.15 For the above reasons, the Panel finds that the JC misapplied the proviso in GR146.2 and that the above-quoted FEI regulations on strict liability and automatic disqualification must apply instead.

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Accordingly, Freund and Mary 64 must be disqualified from the 2004 Championships pursuant to GR146 and GR174 of the General Regulations.

(d) Sanctions

6.16 The Panel considers that, under the circumstances, disqualification is a sufficient sanction and no fine or suspension shall be imposed on Freund.

6.17 GR174, 7.2 states that a competitor disqualified under GR146.2 must also forfeit any prize money won by that competitor on that horse in the same event. The Appellants have submitted that, owing to the circumstances of the case, they do not wish Freund to lose the prize money that he won in the 2004 Championships, but only request that Freund is disqualified. However, GR174, 5.1 also states that:

“Disqualification from a competition means that the competitor and horses concerned – even should they change ownership – is removed from the list of starters and the classification and includes the forfeiture of prize money won in that particular competition.”

Therefore, it is an element of disqualification that prize money won must be forfeited.

6.18 The Panel also notes that under Swiss law, all competitors are entitled to equality of treatment. To allow Freund to retain his prize money in these circumstances when he would otherwise have been required to forfeit such prize money would be contrary to the principle of equality of treatment.

6.19 Therefore, Freund must forfeit all prize money won by him in the 2004 Championships when competing with Mary 64.

(e) Medal Ceremony

6.20 The Panel considers that a medal ceremony during an event as prestigious as a World Championship constitutes an important aspect of an athlete's reward for her/his achievement which the athlete can look forward to, since it allows an athlete to both celebrate that achievement and have it witnessed and respected by his or her colleagues, the sporting world, the media and the public at large. In other words, it would be unfair for athletes to have the ceremony whipped away and for their achievements go unnoticed through a largely anonymous press release.

6.21 Furthermore, the Panel considers that the expectation of being entitled to participate in a proper public medal ceremony is created by the FEI regulations themselves, since GR118 provides for a mandatory procedure with regard to the Prize-giving, stating that: *“Opening, Prize-giving and Closing Ceremonies may follow local custom but they must include the procedure laid down in the following*

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paragraphs". It is clear from the content of the provision that the ritual aspect of the ceremony is important. It includes, among others, the requirements that a representative of the FEI, or alternatively a member of the Ground Jury, distribute the medals and that the ceremony takes place immediately after the event (presumably for convenience but also because of its higher public and emotional impact at such moment).

6.22 Obviously when adopting GR118, the FEI had not anticipated the case of re-distribution of medals. Nevertheless the Panel finds that the purpose and mandatory nature of the provision requires that a ceremony also take place when a re-distribution of medals occurs, and that in such case the procedure followed must remain, in content and spirit, as close as reasonably possible to that of a normal ceremony celebrated at the end of an event, particularly where an event as prestigious as the World championships is involved.

6.23 For the above reasons, the Panel finds that the FEI must organise a new medal ceremony for the Individual Four-in-Hand competition at the 2004 Championships. The precise logistics of the medal ceremony shall be determined by the FEI. However, in keeping with the content and spirit of GR118, the ceremony must at least be public, involve sufficient media coverage, take place before the 2006 FEI World Driving Championship in Aachen, Germany and involve a representative of the FEI distributing the medals.

7. COSTS

7.1 In disciplinary cases of an international nature ruled in appeal, the proceedings shall be free, subject to payment of the CAS Court Office fee, as stated in R65.1 and R65.2 of the Code.

7.2 In this matter, taking into account all the relevant criteria set out in R65.3 of the Code, the number of parties present in the proceedings and the fact that a large part of the evidence and submissions was drawn from those produced in the first instance in front of the JC, the Panel considers that it is appropriate for each party to pay its own costs. Consequently, none of the parties is ordered to contribute to the costs of another.

7.3 Accordingly, this award is rendered without costs except for the CAS Court Office fee of CHF 500 already paid by the Appellants that shall be retained by the CAS under R.65.2 of the Code.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The request for relief of Mr Zoltan Lazar, Mr Félix Marie Brasseur, the Hungarian Equestrian Federation and the Fédération Royale Belge des Sports Equestres is admitted.
2. The request for relief of the Organizing Committee of the 2004 World Driving Championships is rejected.
3. Mr Michael Freund and the horse Mary 64 are disqualified from the FEI World Driving Championship held in Kecskemet, Hungary on 8 August 2004 and the official ranking in the Individual Four-in-Hand competition must be rectified consequently by the Fédération Equestre Internationale, ensuring in particular that Mr Zoltan Lazar is ranked first and awarded the gold medal, Mr Ysbrand Chardon is ranked second and awarded the silver medal and Mr Félix Marie Brasseur is ranked third and awarded the bronze medal.
4. The gold medal obtained by Mr Michael Freund at the 2004 FEI World Driving Championship shall be withdrawn by the Fédération Equestre Internationale.
5. Mr Michael Freund shall forfeit all prize money won at the 2004 FEI World Driving Championship, while competing with the horse Mary 64.
6. The Fédération Equestre Internationale shall organise a new public medal ceremony to take place before the beginning of the 2006 FEI World Driving Championship in Aachen, Germany, with appropriate media coverage, at which the medals won in the Individual Four-in-Hand competition at the 2004 FEI World Driving Championship are redistributed, according to the new rankings, by a representative of the FEI.
7. No fine or suspension shall be imposed upon Mr Michael Freund.
8. All other motions or prayers for relief are dismissed.
9. This award is rendered without costs except for the Court Office fee of CHF 500 already paid by the Appellants and which is retained by the CAS.

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10. Each party shall bear its own costs.

Done in Lausanne, 9 August 2006

THE COURT OF ARBITRATION FOR SPORT



Raj Parker
President of the Panel