



DECISION of the FEI TRIBUNAL

dated 25 September 2007

Positive Medication Case No.: 2006/02

Athlete / NF: Michael Benjamin, RSA

FEI Passport No: 10005828

Person Responsible: Mr Michael Benjamin, RSA

Event: CSI-W Cape Town, RSA, 23-26 November 2006

Rule Violation:

Refusal to submit to sample collection

1. COMPOSITION OF PANEL

Mr Patrick A. Boelens
Mr Ken E. Lalo
Mr Philip O'Connor

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by the Athlete: The FEI Tribunal took into consideration all documents, evidence and pleadings presented in the case file and at the hearing, as also made available by and to the Athlete.

2.3 Oral hearing: By teleconference on 4 April 2007.

Present: The FEI Tribunal Panel

For the FEI:

Alexander McLin, General Counsel
Laetitia Zumbrunnen, Legal Counsel

For the Athlete:

Mr Michael Benjamin, the Athlete
Mr Gilbert Marcus, Counsel of the Athlete
Mrs Anabela da Silva, Counsel of the Athlete

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 21st edition, revision effective May 2006, ("**Statutes**"), Arts. 001, 002, 057 and 058 and Statutes 22nd edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1, 2, 34 and 37.

General Regulations, 21st edition, effective 1 June 2006 ("**GR**"), Arts. 145 and 174 .

The Anti-Doping Rules for Human Athletes, 1st edition, effective 1st June 2004, revised July 2005 ("**ADRHAs**"), Introduction and Arts. 2, 3, 4, 5, 7.1.9, 8, 9 and 10.

World Anti-Doping Code, version effective March 2003.

3.2 The Athlete: Mr Michael Benjamin

3.3 Justification for sanction:

ADRHAs Art. 2: "The following constitute anti-doping rule violations:

[...]

Art. 2.3: "Refusing, or failing without compelling justification, to submit to *Sample* collection after notification as authorized in these Anti-Doping Rules or otherwise evading *Sample* collection."

Subsequent to the adoption of the New Statutes, the Judicial Committee is now referred to herein as the "Tribunal".

4. DECISION

4.1 Consideration of the evidence:

- a. Mr Michael Benjamin (the "**Athlete**") participated in CSI-W Cape Town, RSA from 23 to 26 November 2006 (the "**Event**").
- b. On 24 November 2006, the Athlete was selected for sampling and notified by Mr Yussuf Hank, the Lead Doping Control Officer ("**Lead DCO**") of the South African Institute for Drug-free Sport ("**SAIDS**").
- c. At the time of notification, the Athlete had already dismounted from his horse and was at a bar at the Event, watching the Jump-off. He had not been notified prior to

such time.

- d. At the bar, the Athlete drank a beer and a Savannah, a local brand of cider. When notified by the Lead DCO and a representative of the South African National Equestrian Federation ("**SANEF**"), he advised them that he had consumed alcohol. The Athlete was assured that it was not an issue as long as the Athlete was satisfied that it had been a closed container and that nobody could have tampered with the drink. The Athlete answered that he did not know, as the container was open when handed to him. The Lead DCO said that he would make a note of this on the Doping Control Form.
- e. The Lead DCO and the Athlete then proceeded to the doping control station where the Athlete was introduced to another DCO ("**DCO**") who asked the Athlete some questions and requested that he sign the Doping Control Form, which he did.
- f. The Athlete then informed the DCO about his consumption of alcohol and also told him that he had been taking some medication, "Voltaren" tablets, the name of which he did not remember at the time, to treat pain in his back. He asked whether he might be tested positive. He was told that he could be tested for both and was handed the SAIDS Pamphlet containing the list of illegal substances.
- g. In the pamphlet, alcohol is under a separate section named "*Substances that are prohibited in specific sports*". It is specified that athletes should "*check with [their] Federation whether any of [Alcohol or Beta-blockers] apply to [their] sport*".
- h. At this stage, the Athlete asked whether he could call his doctor to find out the name of the medication he was taking. The DCO agreed and chaperoned the Athlete to his car where his mobile phone was left. As the Athlete could not reach his doctor he called his lawyer to ask for the lawyer's advice. His lawyer advised the Athlete not to submit to the test as he could not give him the correct information in time since he was not at his office.
- i. The DCO and another DCO explained to the Athlete what the implications were if he refused to provide a sample and encouraged him to take the test and sort everything out afterwards.
- j. The Athlete decided not to take the test.
- k. In his written explanation dated 21 December 2006 the Athlete states that he is a businessman and an active amateur show jumping rider. He spent many years riding as

a professional rider both in Europe and in the USA. He stopped riding for 7 years after a bad fall, some 20 years earlier, in which he broke two bones in his back. He managed to get back to competition with the help of physiotherapy, pain relieving drugs as well as a really good groom and rider who help him prepare the horses and compete at lower levels, while he competes at the bigger shows.

- l. The Athlete mentioned that he *"was well aware that [he] could be tested during or after the competition"*, but that in his previous experience he was notified about the test while still on his horse.
- m. In his submission to the FEI Tribunal, the Athlete stated that at the time of refusing to submit to the testing he lacked knowledge regarding the Statutes, GR and ADRHA.
- n. The Athlete also criticized:
 1. the fact that the South African National Equestrian Federation ("SANEF") had failed to put in place a procedure whereby International Athletes sign Appendix 2 of the ADRHA;
 2. the inappropriate procedure followed by the Anti-Doping testing officials in giving him notice of his selection for testing, and the delay in giving such notice.
- o. Nevertheless, the Athlete declared that he had previously been involved in show jumping as a professional rider for many years in Europe and the USA, and that he competes at high level events. The Athlete and all participants at FEI events are presumed to know the FEI Statutes, Rules and Regulations.
- p. Furthermore, the Schedule of the Event clearly indicates that it is organised in accordance with the FEI Statutes, Rules and Regulations although no specific mention is made of the EADMC and ADRHA. The FEI Tribunal accepts that the Event, although having an international status where the FEI Rules and Regulations were applicable, had a national character as, according to the Schedule, no NF other than that of the home country was invited and no competitors other than those of the RSA-NF were competing.
- q. The Athlete also mentioned in his statement that he had been subject to anti-doping tests before but had then been notified while still sitting on his horse. He also declared in his statement that he had heard rumours at the Event about the presence of an anti-drug squad, and so he was aware that he might be selected for sampling. In the submission of 23 February 2007 by counsel for the Athlete, the procedure of an earlier anti-doping test is described and it seems that

this procedure was not followed on 24 November 2006 as it is clearly established by the versions of events provided by both the Athlete and Mr. Hank, the Lead DCO of the SAIDS.

4.2 Analysis

- a. The Athlete is presumed to know the FEI Statutes, Regulations and Rules which is a condition to competing at FEI events. Additionally, the Athlete has signed the form accepting to be bound by the rules as stipulated in the Schedule.
- b. The Tribunal concludes that there was no justification for the Athlete to refuse the anti-doping test even assuming the procedure, as followed by the DCO, was different from the one experienced by the Athlete in previous tests. There was no evidence that the procedure followed at the Event was not authorized under the rules and thereby violated the Athlete's rights.
- c. The Tribunal further concludes that there was no justification for the Athlete to refuse the anti-doping test due to the fact that the notification was given only after the Athlete dismounted his horse and went to the bar, since the Athlete was still at the Event and within the period of jurisdiction of the governing bodies of the Event.
- d. Had the Athlete accepted to be tested, as advised repeatedly by the DCO, the presence of alcohol could have been easily explained and should not have caused a problem, as alcohol is not a prohibited substance in equestrian sports.
- e. Voltaren, a painkiller that the Athlete takes as a medication in order to allow him to compete, is not on the prohibited substances list and should not have caused an issue following detection.
- f. The Tribunal accepts the Athlete's argument that his NF should have made a greater effort to inform the riders about the existence of the rules and the procedures in relation with the ADRHA rules. This could have been accomplished by asking the riders to complete Appendix 2, a document that has been specifically designed to ensure information of and acknowledgement by competitors of the anti-doping rules. According to the Athlete's declaration and testimonies of fellow riders, South African riders have not been asked by SANEF to complete, sign and return Appendix 2 of the ADRHA rules.
- g. The FEI Tribunal determines that the measure of having riders sign Appendix 2 is just an additional measure to ensure education of the population of riders throughout the

world, and although it would have been better for this procedure to have been followed, all riders are presumed to know the rules governing the sport and should have known the ADRHA rules which are clearly identified on the FEI website. This is especially so for an Athlete who, according to his testimony, has been tested before.

- h. The FEI Tribunal accepts that the Athlete is now an amateur and according to the FEI database (www.horsesport.org under Jumping/Online Results) only competes at FEI events in his home country and possibly lacks the ambition to compete at major Games and Championships, as his back condition probably would not allow him to do so. It is also clear that, according to the Schedule of the CSI-W Cape Town of 23-26 November 2006, no foreign NF's were invited to compete.
- i. According to the ADRHA, the sanction to be imposed for the failure to comply with testing is a minimum period of ineligibility of 2 years.
- j. Upon the advice of his legal counsel during a short telephone conversation, the Athlete chose the 'greater evil' by flatly refusing to take the test.
- k. The Tribunal is of the opinion that the range of sanctions provided by the WADA Code and the ADRHA are far too severe to be proportionate when all the circumstances of the case are taken into consideration, but nevertheless the PR had no acceptable reason to refuse the anti doping test and the intentional refusal of a test does not allow any mitigation under existing rules.
- l. One member of the Tribunal expressed concern regarding the delay between the completion by the Athlete of his show jumping round and the time he was requested to provide a sample. This Tribunal member also expressed concern regarding the failure by the FEI and SANEF to implement the stated procedure for obtaining the Athlete's signature on Appendix 2 of the ADRHA. Accordingly this member of the Tribunal was not "comfortably satisfied" that the FEI has established an anti-doping rule violation by the Athlete, as required under Article 3.1 ADRHA.
- m. The Tribunal, by a majority decision, determines that the ADRHA rules must be applied and that the sanctions mandated under the provisions of the applicable Articles of ADRHA must be imposed on the Athlete in accordance with their terms.

4.3 Disqualification

As a result of the foregoing, the Tribunal has decided to disqualify the Athlete from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with ADRHAs Article 9.

4.4 Sanctions

- 1) The Athlete is suspended for a period of **two (2) years** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the Athlete.
- 2) The Athlete shall contribute **1'500.- CHF** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: Yes, Counsels of the Athlete.

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 25 September 2007

Signature: 