Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2011/A/2558 Omran Ahmed Al Owais v. Fédération Equestre Internationale

ARBITRAL AWARD

Rendered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Peter Grilc, Professor Ljubljana, Slovenia

Arbitrators: Dr András Gurovits, attorney-at-law, Zurich, Switzerland

Mr Lars Halgreen, attorney-at-law, Copenhagen, Denmark

In the arbitration between

OMRAN AHMED AL OWAIS, Sharjah Zubair - Area, UAE
Represented by Dr Stephan Netzle and Dr Karsten Hoffman, Netzle Rechtsanwälte AG, Zürich, Switzerland

-Appellant-

and

FÉDÉRATION EQUESTRE INTERNATIONALE, Lausanne, Switzerland
Represented by Mr Xavier Favre-Bulle, Ms Marjolanie Viret, Lenz & Staehlin, Geneva, Switzerland and by Lisa Lazarus and Carolin Fischer, FEI, Lausanne Switzerland

- Respondent-

1 FACTS

1.1 THE PARTIES

1.1.1 Mr Omran Ahmed Al Owais (the "**Appellant**") is an experienced show jumping rider from the United Arab Emirates ("**UAE**") and registered with the Emirates Equestrian Federation. He started his career in 1988 and participates at national and international shows in the UAE and in Europe. He operates his own stables. Oxillilia Joelle is a show jumping horse owned and ridden by the Appellant (the "**Horse**").

1.1.2 The Fédération Equestre Internationale ("**FEI**"; "**Respondent**") is the international federation that governs the equestrian sport, including show jumping, throughout the world. The FEI is established and organised in accordance with Articles 60 et seq. of the Swiss Civil Code and has its seat in Lausanne, Switzerland. It is recognised by the IOC.

1.2 FACTS OF THE CASE

1.2.1 The facts relevant to this case were undisputed and are set out below.

Participation in international show jumping competition in Abu Dhabi (UAE)

1.2.2 On 13 to 15 January 2011, the horse ridden by the Appellant, participated in an international show jumping competition in the UAE, categorised as CSI4*-W competition, i.e. international show jumping event approved by the FEI, and organised by the Abu Dhabi Equestrian Club ("**Event**").

1.2.3 On 12 January, the Appellant intended to transport the horse to the event location, but due to difficulties loading it into the lorry, administered medicine, named Rakelin, to the Horse in order to calm it. Immediately after the arrival at the event location, the Appellant handed over a letter to Mr Adnan Sultan Saif al Nuamini, Director General of the Abu Dhabi Equestrian Club that organized the

Event ("**Event Organizer**"), revealing the fact that he had administered Rakelin and asked for advice on whether the administration of Rakelin affected his ability to compete. The Director General of the Event Organizer informed the Appellant that the Horse would be permitted to compete, if both the name of the Appellant and the Horse appeared on the entry list. On 13 January 2011, both names appeared on the list.

1.2.4 On 13 January 2011, the Horse was selected for blood sample testing and the sample was analysed at the FEI approved laboratory, Hong Kong Jockey Club, Racing laboratory, Hong Kong, China. The laboratory received the sample on 18 January, it was analysed on 25 January and the Test Report was issued on 28 January. The analysis of the blood sample revealed the presence of Reserpine. Reserpine is on the 2011 FEI Equine Prohibited Substance List (No 869 Reserpine; its activity characterized as Tranquilliser). Reserpine is a substance contained in Rakelin.

Adverse Analytical Finding

1.2.5 On 21 February 2011, the Emirates Equestrian Federation (the "**EEF**") was notified by the FEI Legal Department about the Adverse Analytical Finding in the Horse's blood sample and forwarded the letter including information about the Appellant's provisional suspension, which became immediately effective, to the Appellant. The Appellant was informed by letter that he had the right to ask for a preliminary hearing and a B Sample analysis.

1.2.6 On 22 February 2011, the Appellant submitted a statement to the FEI explaining that he administered Rakelin to the Horse and explained the reason for doing so.

Preliminary hearing

1.2.7 On 23 February 2011, a preliminary hearing, held via telephone in the presence of Prof. Dr. Jens Adolphsen as a member of the FEI Tribunal, Ms Carolin Fischer as a member of the FEI Legal Department and the Appellant (who was not represented by counsel), took place before the so-called Preliminary Panel of the FEI Tribunal. Following this preliminary hearing, the provisional suspension was maintained by such Preliminary Panel.

1.2.8 The Appellant waived his right to request a B Sample analysis because he admitted the administration of Rakelin to the Horse and because he had no reasons to mistrust the correctness of the sample analysis.

1.2.9 On 24 February 2011, the Appellant forwarded a written statement by the Event Organizer, signed by the Event Organizer's Director General Mr Al Nuamini, to the FEI, confirming the receipt of the Appellant's declaration letter of 12 January 2011.

1.2.10 On 24 January 2011, the Appellant sent a mail to Prof. Dr. Adolphsen and Ms Fischer with the declaration letter from the Abu Dhabi Equestrian confirming that they received a medicine declaration submitted before the competition and a copy of the declaration confirming the receipt of the Appellant's declaration letter of 12 January 2011.

1.2.11 On 3 May 2011, the Appellant informed the FEI about his plan for his summer competition tour and asked for advice whether he could do so despite the pending proceedings. The FEI considered this notification as a request for a second hearing and lifting of the provisional suspension.

1.2.12 On 13 May 2011, the FEI forwarded a response to the Appellants' letter and request for the lifting of the provisional suspension, respectively, to the FEI Tribunal and requested the dismissal of the Appellant's application as well as maintaining the provisional suspension.

Preliminary Hearing Panel of the FEI Tribunal Decision

1.2.13 On 24 May 2011, the Preliminary Panel of the FEI Tribunal rendered its decision denying that the requirements for a second preliminary hearing had been met and determined that the provisional suspension imposed on the Appellant was to be upheld.

FEI Tribunal Decision

1.2.14 On 4 August 2011, the FEI Tribunal rendered its decision ("**Decision**"; Positive Anti-Doping case No.: 2011/BS04). Following this Decision, the Appellant (referred to as "Person Responsible" in the Decision) was suspended for a period of two years to be effective immediately from the date of notification. The

period of provisional suspension, effective from 21 February 2011 to 4 August 2011, was credited against the Period of Ineligibility imposed in the Decision. The Appellant was ineligible to participate in FEI activities through 20 February 2013, he was fined CHF 1000 and ordered to contribute legal costs in the amount of CHF 1000. The Decision from 4 August 2011 is the subject of appeal in this CAS arbitration.

2 PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

2.1 Statement of Appeal, Appeal Brief and Answer

2.1.1 The Appellant filed his statement of appeal ("**Statement of Appeal**") on 2 September 2011.

2.1.2 On 13 September 2011, the Appellant filed his appeal brief ("**Appeal Brief**"; Statement of Appeal and Appeal Brief together "**Appeal**") including 19 exhibits (A-5 to A-23) and the statement that he intended to call as witnesses and/or expert witnesses, the following persons: Mr Adnan Sultan Saif Al Nuamini (Director General of the Abu Dhabi Equestrian Club), Dr Alberic Thery (veterinarian of the Abu Dhabi Equestrian Club), Mr Adel Khmes (horse rider of the Abu Dhabi Equestrian Club), Mr Hussain Mohamad Atrees (veterinarian), Mr Mohamad Abdullah (animal pharmacy owner), Dr Matthias Krebs (veterinarian).

2.1.3 On 5 October 2011, the CAS Court Office informed the parties that the Panel for the present dispute was constituted as follows: Dr. Peter Grilc as President and Dr. András Gurovits and Mr. Lars Halgreen as arbitrators chosen by the parties.

2.1.4 On 10 October 2011, the Respondent filed the answer (the "**Answer**") to the Appeal including the expert statement by Dr Andrew Higgins (BVetMed MSc PhD FSB MRCVS) and 9 exhibits (R1 – R9a) and the statement that it intended to call as witnesses and/or expert witnesses, the following persons: Dr Andrew Dalglish (FEI veterinary delegate at the event), Mr Ian Williams (FEI Director of Non-Olympic Sports) and Dr Andrew Higgins.

2.1.5 On 11 October 2011, the CAS Court office invited the parties to inform the office whether they preferred a hearing to be held or whether the Panel should issue an award based on the parties' written submissions.

2.1.6 On 18 October 2011, the Appellant informed the CAS Court office that he insisted on an oral hearing, while the Respondent did not request it since the requirements of Article R57 of the Code were met, however the Respondent did not object to a hearing being held, should the Panel consider such hearing to be necessary.

2.1.7 On 22 December 2011, the Panel issued an Order for Procedure setting out, among other things, the composition and the seat of the Panel, the language of the arbitration, and the law applicable to the merits of the dispute. The Order for Procedure was signed on behalf of both the Appellant and the Respondent respectively on 23 December 2011 and 4 January 2012.

2.2 Hearing and post-hearing submissions of the parties

2.2.1 On 1 December 2011, the CAS informed the parties that the hearing would take place on 16 January 2012 in Lausanne. The parties were invited to comment on the proposed hearing schedule and confirm the attendance of witnesses and the manner in which they would be available to give evidence.

2.2.2 The hearing took place on 16 January 2011 in Lausanne on the basis of the CAS notice. In addition to the Panel members assisted by Ms Louise Reilly of the CAS Court Office in Lausanne, the hearing was attended by Dr Stephan Netzle and Dr Karsten Hoffman of Netzle Rechtsanwälte AG representing Mr Omran Ahmed Al Owais and Mr Xavier Favre-Bulle, Ms Marjolanie Viret of Lenz & Staehlin and Ms Lisa Lazarus and MS Carolin Fischer of FEI, representing FEI.

2.2.3 The Panel heard oral opening statements by counsel for the parties and evidence from the following (expert) witnesses: Mr Mohamad Abdullah, Mr Adnan Sultan Saif Al Nuamini (by conference call), Mr Adel Khmes (by conference call), Dr Matthias Krebs, the Appellant (as a party), Dr Andrew Higgins, Dr Andrew Dalglish and Mr Ian Williams. The Appellant's witness, Mr Hussain Mohamad Atrees, could not be reached over the telephone. The witnesses, the experts and the Appellant were questioned firstly, by the party, who called them,

then by the opposing party, then cross-examined and finally questioned by the Panel.

2.2.4 Before the end of the hearing the Panel heard the parties' oral closing statements. In his presentation, the Appellant insisted his requests be accepted, while the Respondent insisted on dismissal of the Appeal in its entirety.

2.2.5 At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings nor to the formation of the Panel. Following these final statements, the President of the Panel declared the hearing closed.

2.2.6 With a post-hearing letter the Panel asked the Parties for submissions to clarify their position whether they consider Reserpine prohibited at all times or not, i.e. whether there would be a legal distinction between an in- and out-of-competition use. The Appellant answered in a letter dated 14 February 2012, while the Respondent did the same in a letter dated 9 February 2012.

3 THE RELEVANT RULES OF CAS AND FEI

3.1 CODE OF SPORTS-RELATED ARBITRATION (2010 EDITION) ("THE Code")

R57 (Scope of Panel's Review, Hearing) of the code states: *"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply.*

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise. If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing."

R58 (Law applicable to the merits) of the code states: *"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 a 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 or 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.*

3.2 FEI RULES

In accordance with Article R58 of the CAS Code, the relevant provisions of the FEI rules and regulations which shall apply on the merits are as follows:

- The Statutes, 22nd edition, effective as of 15 April 2007, updated 1 January 2011, particularly Articles 35 and 37 ("**Statutes**");
- The General Regulations, 23rd edition, effective as of 1 January 2009, updates effective 1 January 2011, particularly Articles 143 and 165 ("**GR**");
- The Equine Anti-Doping and Controlled Medication Regulations, 1st edition, effective as of 5 April 2010, updated 1 January 2011, Part One, Equine Anti-Doping rules ("**EADR**"; "**EADRs**")
- The Veterinary Regulations, 12th edition, effective as of 5 April 2010, updated 1 January 2011, particularly Articles 1006 and 1005 and Annexes V and VII ("**VR**")

4 JURISDICTION

4.1 CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS is based on Article 12.2.1 of the FEI Rules that states that the decision may be appealed exclusively to CAS in accordance with the provisions applicable before CAS. The jurisdiction of CAS, in fact, is not disputed by the parties and has been confirmed by the signing of the Order of Procedure.

5 APPEAL PROCEEDINGS

5.1 As these proceedings involve an appeal against a decision regarding an international level athlete in a disciplinary matter brought by FEI, being an international federation on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary

case of international nature, in the meaning and for the purposes of the CAS Code.

6 SCOPE OF THE PANEL'S REVIEW

6.1 According to the Rule R57 of the CAS Code ... *the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*

7 ADMISSIBILITY

7.1 The statement of appeal was filed within the deadline set in FEI rules and the Appeal Brief was filed within the prescribed deadlines. No objections have been made against the admissibility of the appeal by the Respondent.

8 POSITIONS OF THE PARTIES, WITNESSES AND EXPERTS TESTIMONIES

8.1 The Appellant's submissions

8.1.1 The Appellant's submissions can be summarized as follows:

8.1.2 In respect of the background facts regarding the Event, the Appellant explained that he had considerable difficulties loading the Horse into the lorry and, therefore, asked a local veterinarian, Mr Atrees, for advice. According to the Appellant, the latter suggested administering Rakelin to calm the Horse and stated that this was a natural drug from plants, and that it would not cause any problems or complications. The Appellant purchased Rakelin as a non-prescription drug at the local pharmacy where Mr. Atrees was employed, administered it himself by injecting it into the Horse and then loaded the Horse into the lorry. Although the administration was recommended by a veterinarian, the Appellant wanted to be sure that he was permitted to compete. Therefore, he

informed the Event Organizer by handing over the above-mentioned letter to Mr Al Nuamini, Director General of the Event Organizer. The Appellant asked for advice whether the administration of Rakelin affected his ability to compete, in particular concerning the FEI anti-doping rules. The Director General informed him orally that he and the Horse would be permitted to compete, if his name and the name of the Horse appeared on the entry list issued the following day. This communication was witnessed by two further persons, Mr. Adel Khmes and Dr. Alberic Thery). The two names actually appeared on the entry list of 13 January 2011. There was no further contact between the Event Organizer and the Appellant after delivery of the letter. The other parts of the background facts correspond to rec. 1.2.1 - rec. 1.2.14 of this award (*supra*).

8.1.3 As to the FEI Tribunal decision of 4 August 2011 the Appellant stated the following:

8.1.3.1 He not only handed over said letter to the Event Organizer but also asked Mr Al Nuamini to advise him whether the administration of Rakelin had any effects on his participation. As the Event Organizer did not revert to the Appellant on his request for clarification, the Appellant competed in the Event. The Appellant claims that he trusted the response of Mr Al Nuamini that he could compete if his name and the name of the Horse appeared on the entry list. He would not have competed, had his name and the name of the Horse not appeared on the entry list. In his view the response was unambiguous, as his name and the name of the Horse appeared on the entry list and, thus, he acted in good faith (Para 4.2 of the Decision).

8.1.3.2 The explanation of the Event Organizer's Director General that he had been too busy during the Event to forward the letter to the concerned body was not actually taken into account, when deciding about the sanction. It was the Event Organizer, acting through its Director General, who failed to fully comply with its duties, namely to forward the letter to the relevant bodies (Para 4.4 of the Decision).

8.1.3.3 The FEI Tribunal failed to correctly consider all circumstances of the case resulting in inconsistency and inadequacy of the standard sanction of two years ineligibility which are the following:

8.1.3.3.1 In respect of the issue of an ETUE the Decision (subpara 22 of the decision) contains various inconsistencies (rec 40 of the Appeal Brief):

8.1.3.3.2 The FEI Tribunal's statement that the Appellant competed in the absence of an answer to his question is incorrect, because his decision to take part at the Event was based on appearance of his and the Horse's name on the entry list. He had, therefore, no reason to mistrust the response for several reasons. The response of the Event Organizer's Director General was not immediate, so that the Appellant could assume that his request would be transmitted to and reviewed by the competent persons, who needed some time; the response of the Director General left open both options, namely the Appellant to be admitted or not. Once the names of the Appellant and the Horse appeared on the entry list, the response of the Director General was unambiguous (rec 41 of the Appeal Brief);

8.1.3.3.3 Re subpara 22 of the Decision, the Appellant had no reason to ask again. He claims that there was an oral agreement between the organizers, the veterinarian and the Appellant that the Appellant should not ask again, whether he was admitted or not. Due to the above reasons, especially the existence of the agreement, the participation was not grossly negligent as considered by the FEI Tribunal in subpara 22, quite the contrary, the Appellant got a response from the competent members of the Event Organizer and followed the advice and he cannot be made fully liable, if his request was not handled correctly or the response was wrong (rec 42-44 of the Appeal Brief). He made a voluntary declaration a day before the competition, he was in full compliance with the organizers' advice, he was not grossly negligent, and there was no flagrant violation or grossly negligent behaviour.

8.1.3.3.4 Due to the above reasons, the Appellant has provided all information and documents, therefore the FEI Tribunal's holding that he had not established to bear No Fault or Negligence or No Significant Fault or Negligence has to be to set aside.

8.1.3.4 The Appellant claims that when deciding about the sanction (if any) regarding the Adverse Analytical Finding in the Horse's blood sample, the following should be taken into consideration:

8.1.3.4.1 In the jurisprudence of the FEI, i.e. FEI Tribunal decisions 2009/14 BMC Sarina and 2010/09 CSILLAG, the bottom line is that the sanctions were lower though aggravating circumstances were taken into account, while in the present case there are no aggravating circumstances. Should the Panel determine a sanction, the Appellant proposes a method for calculation of period of ineligibility based on both quoted cases resulting in 10 months in the present case.

8.1.3.4.2 In light of the jurisprudence of CAS (especially CAS 98/184 P./FEI referring to CAS 92/73 N./FEI), it has to be decided by the competent persons or bodies whether a treated Horse will be allowed to take part in the competition or not. But for the rider it is very difficult to identify these competent persons or bodies; therefore, under the given circumstances he acted reasonably when concluding from the behaviour of the Event Organizer's behaviour that he was entitled to participate.

8.1.3.4.3 The FEI enacted a new approach to the FEI Equine Prohibited list. The current Annex II of the FEI Veterinary Regulations is the result of the FEI recently changing its concept of listing Prohibited Substances due to some ambiguity that existed in the past. The Appellant quotes several relevant parts of Annex II and summarizes that the FEI regulations explicitly show that it is very difficult for riders and other people involved in competitions to exactly know whether a drug contains prohibited substances or not and without any assistance by an "expert", a rider has difficulties to find out which drugs can be used without consequences for A/D tests. The rider relied on consultation with the local veterinarian, Dr Atrees, who recommended to apply Rakelin, further stating that it was a natural origin drug and finally, to be absolutely sure asked for a further opinion, when he requested advice from the Event Organizer.

8.1.3.5 As to the commencement date of the suspension, the Appellant relies on Article 10.9.2 of the FEI Rules in support that the commencement date of

ineligibility (if any) should be 13 January 2011 since (i) he was informed on 21 February about the Adverse Analytical Finding, (ii) he submitted his statement admitting he had administered Rakelin and repeating all the facts to the FEI already the next day and (iii) repeated all facts in the preliminary Hearing on 23 February 2011.

8.1.4 Against the above background, the Appellant requests (i) primarily the FEI Tribunal Decision to be annulled and the Appellant not be sanctioned; (ii) subsidiarily, if the CAS Panel finds that the Appellant bears some fault concerning analytical finding to impose the adequate sanction of no more than ten months. (iii) As to the commencement of any imposed period of ineligibility the period of ineligibility to start on the date of the sample collection, 13 January 2011, and consequently the application of Article 10.9.3 of the FEI Rules and finally, (iv) the Respondent shall bear the costs of this arbitral proceeding and contribute an amount to the legal costs of the Appellant according to the Rule R64.5 of the Code.

8.2 The Respondent's submission

8.2.1 The Respondent's submission can be summarized as follows:

8.2.2 As to the application of Article 10.4 EADRS, it is for the person responsible to demonstrate that there are exceptional circumstances justifying the elimination or reduction of the ineligibility period. The Appellant relies on several occasions on Article 10.4. The provision deals only with Specified Substances and Reserpine does not belong to such category of substances.

8.2.3 The Person Responsible in the present case did not fulfil his duties and responsibilities under the EADRs. Following Article 118/3 of the GRs, the Appellant is the Person Responsible and such person is responsible for what a horse ingests (Article 2.1.1 EADR). The care in this specific case must be particularly high, since the Appellant as the Person Responsible is the owner and the rider. He is a professional rider, an experienced competitor as from 1988, operating his own stables. Therefore, he can reasonably be expected to be familiar with the procedures applicable by the FEI events in case his Horse should have to receive special treatment.

8.2.4 The Appellant may not benefit from the rule on no significant fault because he should (i) not have administered the banned substance and (ii) not participated in the Event.

Fault regarding the administration of the banned substance

8.2.4.1 The Appellant, as the Person Responsible, bears the duty to be aware of the substances prohibited under the FEI Rules. Following CAS jurisprudence (e.g. CAS 2008/A/1565, CAS 2007/A/1239, CAS 2008/A/1479) he may not rely on lack of knowledge of the prohibited character of a substance to obtain a reduced sanction. Subject to Article 2 of the EADR, the Person Responsible is responsible for knowing what constitutes an EAD Rule violation and the substances and methods, which have been included on the Equine Prohibited Substances List and identified as Banned Substances. The FEI increased its education efforts concerning prevention of violations by introducing a clearer system of rules distinguishing between doping (banned substances) and medication (controlled medication substances), and implementing other measures, such as a specific website, applications for computers and tablets, information booklets (also translated in Arabic and distributed through national federations), explicit warnings against the use of herbal medications, incl. Reserpine (Annex VII to the Veterinary Rules), as well as a special help line. The Appellant is inaccurate in quoting FEI VR Annex II, because the recent FEI Equine Prohibited Substances List removed any uncertainty and includes a list of substances (Reserpine being one of them) by their exact names under alphabetical order. The Appellant did not undertake the required measures to avoid any confusion between the trade and the substance name, although the FEI Prohibited Substances Database provides an explicit warning regarding this issue.

8.2.4.2 The Appellant should have checked the contents of the drug to ascertain whether it is prohibited. Failing to do so he acted with significant negligence, especially because the prohibited substance was indicated on the product instructions. In present case, the product description reads that Rakelin contains: "*Reserpine 0.5 mg/ml, Long-action, non-sedating injectable calmative agent.*" and contains an explicit warning that before using on horses that will be involved in competitive activities, the pre-competition withdrawal period should be

ascertained. Being in possession of the above information, the Appellant should have checked the FEI Prohibited Substances List, where he would have found Reserpine under the Banned Substances or should have consulted the database on the FEI CleanSport website.

8.2.4.3 Further, the Respondent contests the Appellant's argument that the administration of Rakelin is not an illegitimate treatment of a horse; the only relevant question is whether a substance is on the Prohibited Substances list or not, and Reserpine is identified on such list. Moreover, Reserpine is a very potent drug, widely reported in veterinary publications and equestrian guidelines as a prohibited, non-therapeutic, doping or performing-altering substance. It is licensed for veterinary use neither in Europe nor in the USA. According to the Expert Statement of Dr Higgins there *"... can be no legitimate use of reserpine in a performance horse ... the horse is not competing on its own merits ...behaviour will be modified, there may be locomotor effects which could pose a serious risk to horse, rider and others, including spectators..."*

8.2.4.4 Finally, notwithstanding the veterinary prescription, there could be no reduced responsibility as the athlete cannot reduce his liability by arguing that he followed the recommendation of his treating physician (CAS 2008/A/1565 WADA v/CISM Turrini).

Fault in connection with the participation in the event

8.2.4.5 The Respondent further contends that the Appellant cannot rightfully claim that the Event Organizers Director General informed him that he and his Horse would be permitted to compete, if his name and the name of the Horse appeared on the entry list. According to the Respondent, it is doubtful whether such conversation is sufficiently proven as the Appellant's only piece of evidence is the letter of the Event Organizer's Director General from 24 February 2011 confirming the receipt of the Appellant's declaration for a medication. This letter is, however, silent about any oral agreement that the Appellant could participate should his name appear on the entry list. Moreover, the Appellant did not object to the Preliminary Hearing Panel's finding regarding the issue, neither the first Preliminary Decision.

8.2.4.6 In response to the Appellant's claim that the FEI Tribunal was somehow inconsistent in its reasoning regarding his diligence, the Respondent maintains that the rules for an ETUE process are clear and transparent. It was the Appellant's conduct, which was inadequate because he should have been aware that simply asking the Event Organiser for the permission was not a proper process. Further, the Appellant should have known that no such ETUE could have been granted as Reserpine is a Banned Substance. The relevant rules in this respect are:

8.2.4.6.1 Article 5 EADR which provides that the FEI or its assignees or agents shall be exclusively responsible for testing at international events and no other body may conduct testing.

8.2.4.6.2 The VR, providing a system for equine therapeutic use exemptions ("**ETUE**s") which is similar to the WADA system regarding therapeutic use exemptions ("**TUE**s") and pursuant to which a specified procedure is to be followed if a horse requires treatment during or close to an FEI event.

8.2.4.7 A number of further rules and procedures that the Appellant should have observed (Authorisation of Emergency Treatment available in Annex V to the VRs; Veterinary Guidance on the FEI website pointing out that only FEI veterinary delegates may control or authorize the medication; several rules concerning emergency treatment immediately prior to the event i.e. VR Article 1006, VR Article 1026, Article 4 Annex V to the VRs, VR Article 1026.2). ETUES are only available for Controlled Medication Substances and not for Banned Substances (EADCMRs Appendix 1 – Definitions). Further, the same warning is included in Athlete's Guide to the EADCMRs in simple and transparent words. This list of rules and its contents as well as the CAS jurisprudence (e.g. 98/184 P. v/FEI (at 13) show that allocation of powers and responsibilities is clear and that the Appellant as an experienced competitor cannot simply rely on his ignorance of the ETUE process rules.

8.2.4.8 The Appellant cannot rely upon an incompetent third party unrelated to the FEI doping control programme to exercise his duties under the FEI Rules and he cannot rely, in good faith, on the Event Organizer's statement that he would clarify the Appellant's right to participate on his behalf. The theory of an

agreement between the Appellant and the Event Organizer, acting through its Director General must be rejected.

8.2.5 There is no possibility of reducing the sanction following the severe CAS approach (e.g. CAS 2007/A/1239 at 45). The Appellant has not been able to satisfy his burden of proof and provide evidence that he bears no significant fault or negligence although intentionally administering Rakelin and competing without requesting an ETUE, but simply relying on the Event Organiser's lack of objection to his competing. This behaviour amounts to gross negligence.

8.2.6 The BMC Sarina and the CSILLAG decisions mentioned above do not lead to a different conclusion. The 2-year sanction is the standard sanction and the FEI Tribunal may not arbitrarily depart from the FEI rules, imposing a lower sanction as provided for in the EADRs, except in case the Appellant had demonstrated that he bore no fault or negligence or no significant fault or negligence. The Appellant failed to do so in the present case.

8.2.7 Crediting of the provisional suspension and Commencement of the ineligibility period are subject to recital 8.1.3.55.

8.3 Hearing

8.3.1 At the hearing the representatives of the parties made on their behalf opening statements which can be summarized as follows:

8.3.2 **Dr. Netzle,** legal counsel to the Appellant, explained that the Appellant cannot be compared with the bicycle rider Floyd Landis. The Appellant is an amateur athlete and did not want to cheat and can thus, not be sanctioned in the same way as Floyd Landis, i.e. with a two years suspension. Following the advice of a veterinarian, he administered a small dose of a medicine in order to calm the Horse for the two hours ride to the venue of the Event. He informed the Event Organizer about this treatment on the same day, and when he found his name on the entry list of the next day, he decided to participate at the Event. It is true that he did not apply for an ETUE, but he did not seek for a sportive advantage; he just wanted to calm down the Horse. It is true that he could have found out about the nature of the medicine that he had administered and it is also true that following the Event, he participated at three national events. However, he did so

erroneously. Against this background the main question to be answered by the Panel is whether the Appellant must be sanctioned with a suspension of two years just like any other athlete that administers a banned substance with the aim of gaining a sportive advantage. Given that already more than one year has passed since the Event, a sanction of one year would be appropriate.

8.3.3 **Ms Lazarus**, representing the Respondent, pointed out that even if there was an agreement as to the facts of the case there would be no legally permissible way to reduce the sanction. Clause 10.5.2 of the EADR is clear and does not allow any deviation. The FEI implemented in the recent past a number of measures to make it easier for the athletes to find out which substances are banned and which are not; among others the FEI developed and distributed a specific Athlete's Guide that is available in several languages, including Arabic. It clearly follows from the FEI regulations and documentations that Reserpine is a so-called Banned Substance that would not be available for controlled medication or an ETUE, respectively. Reserpine is known for a long time to be a Banned Substance. The FEI has the sole authority to administer the anti-doping procedures. Therefore, the FEI ensures that at any FEI event an FEI official is present. As regards the sanction for the Appellant, pursuant to the EADR, the lowest possible sanction - should the principle of proportionality be applicable and require a reduction - would be one year.

8.3.4 Following these opening statements, the Appellant and the (expert) witnesses were heard.

8.3.5 The **Appellant** made declarations, concerning *inter alia* his background, results, career, testing history as well as the circumstances before and during the Event.

8.3.5.1 Living in the UAE, he is a horse rider since 1988, having long-term competition experience and taking part in approximately 50 competitions per year. Being active in the family real estate business, he is not a professional athlete, however, training and riding horses has been a big part of his life and he is in possession of 8-9 horses in his stables. The stables are supported by 6-7 people employed, however, no veterinarian among them.

8.3.5.2 Oxillilia Joelle is a show jumping horse owned by him since 2008. He has not experienced any problems with her before.

8.3.5.3 There is a very low level of education of riders in the UAE concerning doping, however, he is aware of the existence of, albeit not familiar with, anti-doping regulations. His knowledge is based on exchange during the daily jumping life, but there is no anti-doping education. He does not know Mr Williams, the official of the FEI responsible for education.

8.3.5.4 He remembered that he wanted to bring five horses to the Event and the groom started to load them at around 6:30 a.m. The groom called the Appellant when he had faced problems loading Oxillilia Joelle. It was the first time he experienced the problem with a jumpy horse and the first time he had to solve such a problem administering medicine.

8.3.5.5 He visited the local pharmacy where the veterinarian employed by the pharmacy sold Rakelin to him. The medicine was given to him without any warning. The veterinarian was not his regular veterinarian. However, he did not seek advice from the regular veterinarian, because the veterinarian selling him the medicine explained that it was herbal, not chemical. He trusted the advice also because he thought that the veterinarian had proposed Rakelin knowing that the Horse would participate at the Event.

8.3.5.6 The Appellant administered Rakelin intramuscular by himself and the Horse was calm after one hour. He did not check the ingredients of the medicine, and he would not have understood the warnings in English.

8.3.5.7 After administering the medicine he returned to his office and wrote the letter (alone, without any assistance of a third person) because he had some doubts and wanted to clarify the matter considering the letter as a proper source of information concerning Rakelin. He never wrote an official request for permission or similar letter before. When he handed the letter to the Event Organizer's Director general, he did not receive any written confirmation, however, he considers an original the letter signed by Mr Al Nuamini from 24 February 2011 as confirmation of receipt of the Appellant's letter.

8.3.5.8 He handed over the letter to the Event Organiser's Director General immediately after he arrived at the venue of the Event. At that occasion, he explained to him the whole situation. The Event Organizer's Director General promised him to take the letter and give it to the relevant person. After asking

the Event Organizer's Director General whether he could start in the competition he answered him that he could, if he appeared on the starting list. As his name was on the entry list on the next day, he participated in the Event. He trusted the Event Organizer's Director General's promise that the letter would be handed to the relevant person.

8.3.5.9 After the Event the Horse was tested and when he was informed of the positive result, he did not demand the B test. He was told that he was on provisional suspension, and after a series of conversations with the FEI and the national federation, he understood that the ban extended only to international competitions. Therefore, he started at three local competitions after the Event. After receiving a clear advice from the FEI explaining that the provisional suspension included national events, he did not compete anymore. As to the FEI proceedings, he explained that he participated at the hearing by means of a telephone conference.

8.3.6 Mr **Abdullah** (witnesses called by the Appellant), confirmed to be the owner of the pharmacy, where Rakelin was bought; he explained the criteria for opening and running a pharmacy in the UAE, which are relatively free in comparison with Europe, as well as the role of the veterinarian in running of the daily business. In the UAE, there is no condition to present a prescription in order to buy a medicine. There is no need that the owner of the pharmacy validates the prescription and the medicine can be acquired from the veterinarian, employed in the pharmacy being the person responsible. Mr. Abdullah did not have any contact with the Appellant on the day when Rakelin was bought. However, he had been informed about the sale of the product to the Appellant by the veterinarian employed in his pharmacy. He knows that Rakelin is a tranquilizer, used especially in connection with shoeing of horses and in the case of problems during or before transportation. He knows that Rakelin and Reserpine, becoming effective two hours after administration, are dangerous for sport.

8.3.7 Mr **Al Nuamini** (witness called by the Appellant; heard by conference call) was the Director General of the Event; the Abu Dhabi Equestrian Club has been organizing the Abu Dhabi international jumping event for the last 19 years. The witness explained that the Appellant entered his office before the Event started., The Appellant explained him the previous problems with the Horse and gave

him a letter. The witness told the Appellant that he would take care of the letter and forward it to the Event's official veterinarian. However, following this conversation he forgot about the letter and left it on his desk until the end of the Event when he finally passed on the letter to the FEI. He did not remember whether he promised that the Appellant would be allowed to participate should his name appear on the entry list. The witness remembered that another rider (Mr Khmes) and a doctor (Dr Alberic, not Dr Dalglish who was the official veterinarian for the Event) were present when the conversation and the delivery of the letter took place. It is well known to the riders that Dr Dalglish is the FEI official veterinarian.

8.3.8 Mr **Khmes** (witness called by the Appellant; heard by conference call), a rider, explained he was present in the club office during the conversation between the Appellant and Mr Nuamini, together with Dr Alberic. He knows the Appellant for twenty years. He is a good person and one of the first to start this sport in the UAE. He has never had any problem with medication or treatment of a horse. He knows the Horse as a good, sometimes difficult, and a little bit hot horse. The witness confirmed that Mr Al Nuamini promised to take care of the letter and would give it to the official veterinarian of the Event. He further believed that Mr Al Nuamini said that the Appellant could participate at the Event should he see his name on the entry list.

8.3.9 Dr **Krebs** (expert witness called by the Appellant), explained that he is a veterinarian with his own practice. He first met the Appellant in 2006. Later, they established a cooperation based on his occasional visits in the UAE at the Appellant's stables helping him with more serious veterinarian problems. In 2010, he became a veterinarian for the UAE team and is familiar with horse sports in the UAE in general. The veterinarian system in the UAE is characterized by the occasional presence of veterinarians from abroad and reliance on good clinics abroad. He considers himself as a veterinarian for particular cases. While being in the UAE, he experienced much more relaxed conditions in terms of formal procedures at national events. He never heard about anti-doping education programs in the UAE, without, however, being permanently in the UAE. Concerning the Horse, he did only regular checks and regarded the Horse as not any different from others in terms of being nervous,

afraid and the like. He has read and agrees with the expert statement of Dr Higgins (as filed by the Respondent) concerning Reserpine. 3 ml of Rakelin containing 1.5 ml of Reserpine is a normal dose, but if administered, might be dangerous, if the horse is transported or in the upright position not being balanced. He agrees Reserpine is not a short sedating sedative, thereby confirming Dr Higgins statement at 5.5 and at 5.1 (there can be no legitimate use for Reserpine in a performing horse). An experienced veterinarian would not recommend it and the proper procedure when faced with an edgy or jumpy horse while loading her, would be to try again or administer a mild sedative.

8.3.10 Dr **Higgins** (expert witness called by the Respondent) already delivered his written expert statement and explained during his testimony that he was surprised that a non-veterinarian administered Rakelin. Reserpine is known as a long-lasting (3-week) tranquilizer. Rakelin is not permitted in many countries, not because of a lack of demand, but because it is toxic.

8.3.11 Dr **Dalglish** (witness called by the Respondent) has been working for stables in Abu Dhabi as a veterinarian since 1994. He is the FEI delegate as of 1995. The FEI delegate insures that veterinarian rules are implemented strictly during the events, while the so-called Grand Jury runs the events and makes the required decisions. He was the FEI veterinarian delegate at the Event, but not the treating veterinarian, and remembers the Horse as a grey horse with hena coloured legs and that was the reason why she was chosen for inspection. He took the blood samples in the presence of the groom, completed the forms and made proper identification. He is not aware of any letter; the Director General of the Event Organizer did not mention any letter to him , and he definitely did not see the letter written by the Appellant. Actually he has never seen such a letter in his career. Any such kind of communication should normally be handed over to him as the FEI veterinarian delegate, the Grand Jury or to the treating veterinarian. For ETUEs two different types are in use. At the Event there were four such forms. As to the edgy horses, he explained that they are not problematic, if treated by experienced grooms, Any such problem usually occurs with young horses and sedation is considered as a last resort. Finally, he explained that in the UAE there is an established system for importation, licensing and selling of medicine in reputable pharmacies based on prescriptions.

8.3.12 Mr **Williams** (expert witness called by the Respondent), the FEI director for non-Olympic sports explained that the FEI introduced new anti-doping rules in 2009 and organized several educational seminars (in UAE 2008 or 2009, however, not on an obligatory basis for the participation of athletes), issued detailed guidance, disseminated athlete's guides booklets to all federations (federations being responsible for dissemination), and translated this material also into Arabic language (shortly before Christmas 2010). The FEI invested considerable efforts in athlete's education including clearer system of rules, specific website dedicated exclusively to horse doping and medication with a friendly user prohibited substances database.

8.3.13 In the closing statement on behalf of the Appellant **Dr. Netzle** pointed out that same facts need to be treated in the same way, while different facts need to be treated differently. The facts of the case are accepted. The Appellant received unfortunate advice regarding the treatment of the Horse. However, he immediately disclosed the fact that he had administered Rakelin. Given that on the next day his name appeared on the entry list, the Appellant was of the firm belief that he was allowed to participate. Imposing a two years suspension on the Appellant would be the same as treating him like athletes who try to cheat. There is a number of mitigating circumstances in favour of the Appellant,such as: the Appellant relied on the advice of a veterinarian, he made disclosure prior to the Event, he relied on the advise received from the Event Organizer, he did not attempt to hide anything, he waived the B-test and cooperated from the beginning, the relevant FEI database only shows the ingredients of a product but not its trade name, the Athletes' Guide had been made available in Arabic language only shortly before the Event, the environment in the UAE is in general different, the Appellant is a true amateur, who has never had any issues with doping, the Appellant did not intend to increase the performance of the Horse, he could not have done more than what he did, and he has already served more than 12 months. It is true that he participated at national events three times, but immediately stopped, when he was told that the provisional suspension also extends to national events. A ban of 12 months would be sufficient under the given circumstances; these 12 months are already served.

8.3.14 The FEI representatives pointed out that Clause 10.5.2 of the EADR is decisive. It is the Appellant's duty to familiarize himself with the applicable rules and it is the responsibility of the Appellant as the Person Responsible to ensure that no Banned Substance is administered to his horse. The Appellant is an experienced rider competing approximately 50 times per year and he runs his own stable. In the present case, the threshold for a lower sanction is not met. The explanations of the Appellant are not credible, and it has not been confirmed that it was said he could compete, should his name appear on the entry list. Further, should he have received wrong advice from the Event Organizer, he may have a case against it. However, the Appellant still remains liable against the FEI under the FEI rules. Finally, there are no other mitigating circumstances.

8.4 Post-hearing submissions of the parties

8.4.1 Upon request of the Panel, the parties clarified their positions whether there was a distinction between in- and out-of-competition use of Reserpine in their letters dated 14 February (Appellant) and 9 February 2012 (Respondent).

8.4.2 The Respondent relies on Article 2.1.1, 1st sentence of the EADRs (strict liability) prohibiting the substance in- and out-of-competition. By contrast Article 2.1.1 1st sentence of the ECMRs prohibits the use of a Controlled Medication Substance during an event. It further relies on Annex II of the VEI VRs and on Athlete's Guide to the Equine Anti-Doping & Controlled was tested positive to Reserpine during an in-competition testing, therefore it is not relevant that the substance was still present in the horse's system.

8.4.3 The Appellant states that the list of prohibited substances became effective on 4 April 2011 while the administration of Rakelin took place on 13 January 2011. He draws attention to a distinction between testing (in- and out-of-competition testing) in human sports and testing in equine sports: contrary to human sports, the FEI did not introduce out-of-competition testing. Further, the Athletes' Guide does not support the Respondent's above interpretation because, it again does not introduce the out-of-competition testing (p. 15 of said Guide). Further, there were no intelligence-based reasons for such testing and finally Article 2.1.1 of the ECMRs is not applicable to this case and may not be used for the

interpretation of Article 2.1.1 of the EADRs, where no reference for out-of-competition can be found.

9 LEGAL ANALYSIS

9.1 The doping offence on 13 January 2011

9.1.1 Article 143.1 of the GR states that ... *"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)".*

9.1.2 Article 2.1.1 of the EADR states that ... *"It is each Person Responsible personal duty to ensure that no Banned Substance is present in the Horse's body. Persons Responsible are responsible for any Banned Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 - 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1."*

9.1.3 In the present case, the Appellant acknowledged the presence of the Banned Substance, Reserpine, in the blood sample of his Horse taken just after he had participated in the Event on 13 January 2011. Reserpine is a behavioural modifier used as a long lasting tranquilliser and categorised by the FEI as a Banned Substance. The Appellant confirmed that he obtained no ETUE for this substance prior to the Event.

9.1.4 The Appellant, furthermore, admitted that he administered Rakelin before the Event and since Rakelin contains the prohibited Banned Substance Reserpine and the Appellant did not challenge the positive finding, the doping offence is therefore established.

9.2 Basic Conditions for an Elimination or Reduction of the Sanction Based on "No Fault or Negligence" or "No Significant Fault or Negligence"

9.2.1 Article 10.2 of the EADR provides that *"Sanction imposed for a violation of Article 2.1 (presence of a Banned Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Banned Substance or a Banned Method) or Article 2.5 (Possession of a Banned*

Substance or a Banned Method) shall be as follows unless the conditions for eliminating, reducing, or increasing the Sanction provided in 10.4, 10.5, or 10.6 are met. First Violation: Two (2) years Ineligibility; A Fine of CHF 15,000 unless fairness dictates otherwise, and appropriate legal costs."

9.2.2 **No Fault or Negligence** is defined as: *»The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method* (APPENDIX 1 to the EADR, – DEFINITIONS).

9.2.3 No Significant Fault or Negligence is defined as: *"The Person Responsible and/or member of the Support Personnel establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for NO Fault or Negligence, was not significant in relationship to the EADCM Regulation violation)."* (APPENDIX 1 to the EADR, – DEFINITIONS).

9.2.4 These provisions must, however, be read in conjunction with **Article 2.2** (*Use* or *Attempted Use* of a *Controlled Medication Substance* or a *Controlled Medication Method): 2.2.1 It is each Person Responsible's personal duty, along with members of their Support Personnel, to ensure that no Controlled Medication Substance enters into the Horse's body In-Competition without an ETUE. Accordingly, it is not necessary that Intent, fault, negligence or knowing Use on the part of the Person Responsible, or member of his or her Support Personnel (where applicable), be demonstrated in order to establish a Rule violation for Use of a Controlled Medication Substance or a Controlled Medication Method.*

2.2.2 The success or failure of the Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method is not material. It is sufficient that the Controlled Medication Substance or Controlled Medication Method was used or attempted to be used for an ECM Rule violation to be committed.

9.2.5 In order to avoid the ineligibility sanction or to achieve a reduction of such sanction, the Appellant must establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered the Banned Substance Reserpine, or, respectively, he must establish that in view of the totality of the circumstances the degree of his negligence was so slight that a finding of "No Significant Fault

or Negligence" is inevitable (P. v/ITF CAS 2006/A/1025) . To this end, he must first establish how the Banned Substance entered the Horse's system.

9.3 How the Banned Substance entered the Horse's system

9.3.1 As already stated in 9.1.3, the Appellant admitted that he administered Rakelin containing Reserpine himself as (i) it derives from rec. 6 of the Decision, (ii) rec. 11-13 of the Appeal Brief, (iii) the Appellant's letter from 22 February 2011, and confirmed by (iv) the Appellant's testimony at the hearing in the present case.

On the basis of the above facts, the Panel concurs with the FEI Tribunal that the source of the contamination was indeed the injected dose of Rakelin, which entered into the Horse's system through the administration by the Appellant himself. Accordingly, the Panel holds, that the Appellant has proved to its satisfaction how the substance entered the Horse's system. Against this background, the Panel has to examine (i) whether the Appellant could prove to its satisfaction that there was no fault or negligence on his side which would cause the Panel to lift the sanction imposed by the FEI Tribunal, and (ii) whether the Appellant could prove to the Panel's satisfaction that there was no significant fault or negligence, in which case the Panel could reduce the sanction.

9.4 The Question of No fault or negligence

9.4.1 Article 10.5.1 of the EADR provides: *"If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he or she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions may be eliminated in regard to such Person. When a Banned Substance or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable and other Sanctions are eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7 below."*

9.4.2 As established by the Panel above in this award (supra 9.3), the first condition provided in Art. 10.5.1 EADR (the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system) has been fulfilled.

9.4.2.1 The burden is on the Appellant to prove that he is not guilty of a doping offence. To this end, the Panel considered the written submissions of the Appellant, his testimony during the hearing, the testimony of the several witnesses brought forward by the Appellant a well as statements of his legal counsel during the hearing. The Panel further analyzed relevant CAS jurispendence regarding the subject matters. Against this background, it is the opinion of the Panel that the Appellant has not succeeded in proving that he was without fault or negligence. The Appellant contends that he was not aware Rakelin contained a substance which was the source of the positive doping test of the Horse. In fact, the Panel accepts, in the Appellant's favour, that he did not intentionally provide the Horse with a Banned Substance, in other words, that he did not know that Rakelin contained Reserpine. The Panel further assumes, in the Appellant's favour, that administering of Rakelin was in fact the cause for the positive doping result as established by the laboratory on 28 January 2011, and that he had relied on the veterinarian and had no intention to dope the Horse in order to improve its performance at the Event, but rather intended to calm down the Horse to overcome the problems with loading it on the truck.

9.4.2.2 However, lack of intent is not the relevant criteria. Non-existence of fault or negligence must be proved by the Appellant to benefit from Article 10.5.1. The Panel is of the opinion that this criteria has not been fulfilled.

9.4.2.3 Under the given circumstances, the Appellant acted negligently when he administered Rakelin to the Horse without making certain that it did not contain a Banned Substance. He simply followed an advice of the veterinarian with whom he had no prior personal or professional experience so he cannot claim an elimination of the sanction by arguing that he followed the recommendation of his treating physician (cf. CAS 2008/A/1565 WADA v/CISM Turrini).

9.4.2.4 Further, the Appellant did not check the product description, which was clear and written in English, which the Appellant should have understood Moreover, he did not follow the explicit warning concerning the use of Rakelin before using it on the Horse that would be involved in competitive activities.

9.4.2.5 The laboratory analysis and the quantification of its analytical results were correct and undisputed, the presence of a prohibited substance in the sample of the Appellant's Horse was clear, the applicable anti-doping rule of the FEI was one of strict liability (... *an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance*; CAS 2001/A/317 A. v/FILA) and the Appellant was therefore sanctioned for a two-year ineligibility period. Under these circumstances it is certainly not a valid excuse for the Person Responsible to contend that he was not aware of the warnings. In fact, athletes are presumed to have knowledge of information, which is in the public domain. In this context, the Panel notes that there is CAS case law to the effect that athletes are themselves solely responsible for, inter alia, the medication they take and that even a medical prescription from a doctor is no valid excuse for the athlete in a doping case (CAS 92, 73, N. v/FEI, CAS Digest, p. 153, 158).

9.4.2.6 The Panel accepts the fact that the level of education of riders in the UAE concerning doping may be lower and not comparable with the level in the countries where it is considered high However, the Appellant as an experienced rider knows, or must be expected to know, of the existence of anti-doping regulations. As such he would be expected to apply at least a minimal degree of dilligence and read the description and the warning. In any case, if he was not able to understand it, he could have sought advice or consultation, before injecting it into the Horse.

9.4.2.7 Therefore, the Panel does not see sufficient grounds to conclude that there was No Fault Or Negligence on the part of the Appellant within the meaning of Article 10.5.1 of the EADR.

9.5 The Question of No significant fault or negligence

9.5.1 Article 10.5.2 of the EADR provides: *"If a Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he or she bears No*

Significant Fault or Negligence, then the otherwise applicable period of Ineligibility and other Sanctions may be reduced in regard to such Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Banned Substance or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance or its Metabolites or Markers), the Person alleged to have committed the EAD Rule violation must also establish how the Banned Substance or its Metabolites or Markers entered the Horse's system in order to have the period of Ineligibility and other sanctions reduced."

9.5.2 As already pointed out, No Significant Fault or Negligence is defined as *The Person Responsible and/or member of the Support Personnel establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation.*

9.5.3 **Examination of Arguments for and against the application of Article 10.5.2 EADR in Favour of the Appellant**

In view of the given circumstances of the case, the Panel considered, in particular, the following aspects.

9.5.3.1 **Trust**

9.5.3.1.1 Although the veterinarian who sold the medicine to the Appellant and who was called by the Appellant as a witness could not be reached during the hearing, the Panel concludes on the basis of the submissions of the Appellant and the testimony of the owner of the pharmacy, Mr. Mohamed Abdullah, that the Appellant may have, indeed, bought Rakelin following the advice obtained from the veterinarian. The Panel, thus, concludes for the purposes of assessing whether Art. 10.5.2 EADR should be applied that the Appellant relied on the advice of the veterinarian in the local pharmacy while seeking medicine for calming the Horse.

9.5.3.1.2 The Appellant also relied on the veterinarian's advice that the medicine was "natural" assuming that the natural origin itself meant that the medicine did not contain prohibited substances.

9.5.3.1.3 Further, he relied on the promise - the Panel accepts there was a promise made by Mr Al Nuamini - of the Director general of the Event Organizer that the letter would be handed over to the relevant person. The Panel interpreted the promise and the perception of promise within its broad meaning and is willing to accept that the Appellant considered the promise as an agreement between him and the Director General that the letter would be forwarded and that he would be permitted to compete if his name and the name of the Horse would appear on the entry list the next day.

9.5.3.1.4 However, the Panel takes the view that notwithstanding the trust in which the Appellant had, or may have had, in this promise, the Appellant cannot be considered as relieved of his elementary duties to check and read the production description and the warning placed on the label of the medicine as well as to satisfy himself that the substance is not identified in the Equine Prohibited Substances List.

9.5.3.1.5 Therefore, the element of trust may not be accepted as a special circumstance relieving the Appellant within the meaning of Art. 10.5.2 EADR.

9.5.3.1.6 The same applies to the argument of the Appellant (supported by the testimony of the expert witness, Dr. Krebs) that in the UAE a specific pharmacy and veterinarian system exists. First, in the view of the Panel the Appellant did not establish that this system is, indeed, very different from what is customary in many other countries of the world. According to the expert witness called by the Respondent, Dr. Dalglish, there is an established system for importation, licensing and selling of medicine in reputable pharmacies based on prescriptions as in many other countries in the world, and, therefore, the Panel believes that even after the hearing, this question of the actual pharmacy and veterinarian system in the UAE must be left open. However, even if this fact does not by itself exclude the possibility that the Appellant did actually buy Rakelin in the pharmacy and the Panel did accept, in favour of the Appellant, that he actually bought Rakelin in the local pharmacy without prescription and trusted on the advice of the veterinarian, for the reasons set out above, such argument may not be qualified as a special circumstance in the present case allowing application of Art. 10.5.2 EADR.

9.5.3.2 **Acting Bona Fide**

9.5.3.2.1 The Panel considers that disclosure of the administration of the medicine, even though by means of a simple letter and not using the official FEI forms, demonstrates that the Appellant did not try to cover anything up and that he tried to be transparent. In the view of the Panel, he was acting bona fide, because he disclosed the fact that he administered Rakelin before the Event and did not try to cover that fact. On the other hand, however, the Panel takes the view that in light of the applicable regulations the Appellant may not rely on disclosure and a third party promise to comply with his duties under the FEI rules. The Panel rather follows the Respondent's view that the Appellant's good faith based on the Appellant's trust that the Event Organizer would obtain authorization on his behalf and that in the existence of a mutual agreement in this respect is not sufficient to discharge him, since the Appellant should have known that any efforts to obtain an ETUE for a Banned Substance would have been in vain. Consequently, acting bona fide can not be accepted by the Panel as a special circumstance permitting a reduction of the sanction in accordance with Art. 10.5.2. EADR.

9.5.3.3 **The nature of the letter**

9.5.3.3.1 Despite the fact that the FEI introduced a strict system for obtaining ETUEs, it was the Appellant's perception that he acted correctly. The letter handed by the Appellant to Mr Al Nuamini can be seen as a certain kind of disclosure and supports the Appellant's statement that he did not act with intention to get a competitive advantage. Therefore, the Panel considered whether the letter may be qualified as a substitute (also taking into consideration that the educational level concerning anti-doping, reporting etc. in the UAE may not be optimal) for an official ETUE. However, the Panel concludes that the letter cannot be seen as a substitute for the official forms. The letter can be described as a general and informal request including various questions. It does, however, not meet the requirements and criteria of the FEI official forms. Moreover, the Appellant did not follow the relevant procedure provided for by the FEI rules. Therefore, the Respondent's argument that there was no evidence of receipt of the letter, that only the club rider remembered that the letter was handed over to the Director General of the

Event Organizer and that the latter promised to forward it to the FEI veterinarian, are obsolete. Against this background the Panel concludes that the letter and its delivery to the Event Organizer's Director General do not and could not serve as a means substituting for the relevant FEI forms and procedures even if the Panel considered that the letter was actually delivered and the Director general of the Event Organizer promised to forward the letter to the relevant person.

9.5.3.4 **Education**

9.5.3.4.1 The Respondent presented several activities concerning its educational efforts in the area of competition and anti-doping in the period before the present case occurred. However, following the testimonies at the hearing, the Panel considers the level of education in the UAE as potentially not comparable to the level in benchmark countries and dissemination of booklets and guidance at the national level in the UAE may not be adequate Further, it appears that the Arabic translation of relevant documents was available only ten days prior to the Event. These circumstances could be qualified as important and exceptional for the present case.

9.5.3.4.2 Moreover, the Appellant stressed that the revised 2011 FEI Equine Prohibited Substances list presented by the Respondent as exhibit R-6 came into effect on 4 April 2011, i.e. almost three months after the Event. However, Reserpine was not marked as "New", i.e. as a substance that was newly added against the 2010 list, so that the Panel concludes that Reserpine was already contained in the 2010 list.

9.5.3.4.3 Given that the Appellant, being a long-term experienced competitor participating at approximately 50 competitions per year, is not a newcomer in the equine sports and anti-doping rules were not inaugurated completely from scratch at the end of 2010 must be expected to be familiar with the basic and fundamental rules and regulations regarding doping and the above mentioned possible flaws in the education in the UAE cannot outweigh these duties of the Appellant.

9.5.3.4.4 The Panel, therefore, concludes that although accepting a lower educational level in the UAE, this fact cannot be qualified as a special circumstance in the

present case allowing a reduction of the sanction pursuant to Art. 10.5.2 of the EADR.

9.5.3.5 **Other arguments**

9.5.3.5.1 Other arguments brought forward by the Appellant as mitigating factors (such as no prior event of doping by the Appellant in his entire career; no intent to improve results of the Horse; low dosage administered only to calm down the edgy Horse, no comparability to doping cases of athletes with the clear intention to cheat) cannot by the Panel be individually qualified as a special circumstance in the present case.

9.5.3.6 **The "Totality of the Circumstances"**

9.5.3.6.1 Appellant presented most of the above arguments as "mitigating circumstances". They were individually rejected as "special circumstances" above. However, the Panel also followed the standard that *"The Panel must look to the totality of the circumstances in evaluating whether Respondent's case is indeed "truly exceptional"*. The Panel, therefore, made a further analytical step and considered all possible mitigating factors as a whole. However, also in light of previous CAS jurisprudence the Panel concluded that these factors do not, in sum, reach the threshold for a reduction of the sanction in accordance with Art. 10.5.2 EADR.

9.5.3.6.2 Arguments, which prevent application of Article 10.5.2 in favour of the Appellant include that the Appellant (i) is a experienced competition rider competing 50 weekends per year; (ii) is a stable owner, therefore he performs systematic activities with horses; (iii) bought Rakelin in local pharmacy not trying to load the Horse using other methods or medicine, he simply relied on the local veterinarian's advice knowing that the veterinarian did not even see the Horse and was not informed whether Rakelin has been bought for a racing horse; (iv) administered Rakelin himself despite the fact that instructions on the package demand administering by the veterinarian.

9.5.3.6.3 As a concluding remark the Panel notes that all of the above possible mitigating factors relate to the period after the Appellant had administered the substance. As the FEI Equine Prohibited Substance List does not distinguish between substances that are forbidden during competitions only and those the use of which is permanently forbidden, it appears that the simple administration of Rakelin to a horse that is registered for participation at FEI competitions, irrespective of whether or not the Horse did actually participate at the Event, may constitute an anti-doing rule violation. In other words, any steps undertaken by the Appellant after injecting the substance could have been in vain in light of Art. 10.5.1 and 10.5.2 EADR. The Panel notes that the Respondent did not bring forward this argument. However, in the Panel's view the question whether behaviour after the injection of a Banned Substance can meet the threshold of Art. 10.5.1 and 10.5.2 EADR at all or whether it must be disregarded for purposes of application of these provisions, can be left open for the purposes of this award, as the Panel concludes that the Appellant's behaviour after injecting the substance would anyhow, i.e. even if, in principle, admissible, not meet the strict requirements under Art. 10.5.1 and 10.5.2 EADR.

9.5.3.7 **CAS Jurisprudence**

9.5.3.8 CAS jurisprudence is based on the standard that *the athlete may benefit from the exceptions* comparable to the FEI Article 10.5.2. (10.5.2. WADC) *where circumstances were truly exceptional* (CAS 2004/A/690 H. v/ATP, at 72; CAS 2006/A/1025 P. v/ITF, at 11.5.9; CAS 2009/A/1870 WADA v/H. & USADA, at 64, 111, 117, 118, 119). None of the circumstances in the present case qualify as truly exceptional following the criteria as set in CAS jurisprudence.

9.5.3.9 The athlete cannot be considered as bearing the circumstance which the standard that the athlete shows good faith efforts *"to leave no reasonable stone unturned"* (CAS 2009/A/1870 WADA v/H. & USADA at 120; quoting D. v/CCES & CAS 2008/A/1510, WADA v/D., CCES and Bobsleigh Canada Skeleton, § 7.8) before ingesting. The standard is set in CAS 2009/A/1870 where the athlete *"... made the research and investigation which could be reasonably expected from an informed athlete wishing to avoid risks connected to the use of food*

supplements." The Appellant in the present case did neither consult the description, the wording on the package nor the warning.

9.5.3.10 The standard as set in CAS jurisprudence (2001/A/317 A. v/FILA) stating that it certainly was not *"... a valid excuse for an athlete to contend that he/she – personally – was not aware of these warnings." and further "... an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance"* is even higher than in the present case.

9.5.3.11 In light of the above case law and argumentation, the Panel concludes that the standard set out in CAS jurisprudence does not allow the Appellant in the present case to benefit from the "no significant fault or negligence" exception.

9.5.4 **Conclusion**

9.5.4.1 In order to benefit from the "no significant fault or negligence" rule, the Appellant must show how the prohibited substance entered the Horse's system, and the Appellant was able to do so to the Panel's satisfaction. However, the Appellant failed to establish that he bears no significant fault or negligence pursuant to Art. 10.5.2 EADR. The Panel cannot, in particular, reach the conclusion that the Appellant exercised *"utmost caution"*.

9.5.4.2 The Panel followed the standard as developed in CAS jurisprudence understanding that the *"utmost caution"* (as in CAS 2006/A/1025 P. v/ITF, at 11.4.3) *demands that the athlete must establish, to the satisfaction of the Panel, that the athlete took all of the steps that could reasonably be expected of him to avoid ingesting prohibited substance and (b) it would be unreasonable to require the athlete to take any other steps."* The approach is supported by other CAS decisions. In the present case the Appellant is responsible for the presence of a prohibited substance in the Horse's system, the Appellant is an experienced athlete and it would be indeed negligent for an athlete willing to compete in national and international events to use a medical product, ***"not leaving no reasonable stone unturned"*** (standard as developed in CAS 2009/A/1870 at 120), in researching whether such a substance might cause effects prohibited by anti-doping rules.

9.5.4.3 The issue whether an athlete's negligence is "*significant*" has been much discussed in the CAS jurisprudence (supra e.g., in the cases CAS 2005/A/847, K. v/ FIS; CAS 2008/A/1489, CAS 2008/A/1510; CAS 2006/A/1025, P. v/

ITF; CAS 2005/A/830, S. v/ FINA; CAS 2005/A/951, C. v/ ATP Tour; CAS 2004/A/690, H. v/ ATP Tour; CAS OG 04/003, E. v/ IAAF) offering guidance to this Panel. Two principles are usually underlined with respect to the possibility of finding the athlete's negligence, not significant. A period of ineligibility can be reduced based on no significant fault or negligence, only in cases where the circumstances are truly exceptional and not in the vast majority of cases (From CAS 2009/A/1870 WADA v/H. & USADA at 117: for instance, a reduced sanction based on no significant fault or negligence can be applied where the athlete establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances and the athlete exercised care in not taking other nutritional supplements; cf. CAS 2008/A/1489 & 1510, at § 7.4, quoting from the official commentary of the WADC). After examining all circumstances of the present case, the Panel considers that it is not possible to find any of the circumstances proven to be truly exceptional. In conclusion, the Appellant cannot benefit from a reduction of the sanction based on the no significant fault or negligence rule.

9.6 Concluding Remarks

9.6.1 The Panel recognizes that, as has been stressed by the Appellant's counsel, the present case is significantly different from cases where the athletes intentionally cheated with the aim of improving their performance. The Panel accepts that the Appellant did not inject Rakelin with the intention of improving the Horse's performance during the Event. Therefore, the Panel also considered whether the CAS jurisprudence and/or basic principles of law would allow for a reduction of the standard sanction of two years, given that the Appellant does not meet the requirements provided in Art. 10.5.2 EADR. Thereby, the Panel, in particular, considered that, as a rule, it is well established that a two-year suspension for a first doping offence is legally acceptable and commonly recognized in WADA rules and CAS decisions. The Panel, however, also considered CAS decisions where the standard sanction was reduced for reasons of violation of the principle of proportionality (e.g. CAS 2006/A/1025 P. v/ ITF). However, the Panel takes the view that the circumstances of the present case are not that exceptional that would justify the Panel to conclude that Art. 10.5.2 EADR would "*not provide a*

just and proportionate sanction", i.e. that there is a gap of the EADR that must "*be filled by the Panel applying the overarching principle of justice and proportionality on which all systems of law, and the WADC itself, is based*" (CAS 2006/A/1025, p. 39). Although the Panel accepts that the Appellant did not administer the substance with the aim of improving the Horse's performance and did, thus, act significantly different than atheletes that want to cheat, the Panel must apply the relevant laws and regulations as currently in force. These laws and regulations, in particular the provisions of Art. 10.5.2 EADR, do not allow the Panel to reduce the sanction of two years imposed by the FEI Tribunal.

10 COMMENCEMENT OF INELIGIBILITY PERIOD

10.1 The Appellant relies on Article 10.9.2 (Timely Admission) of the EADR providing that »*Where the Person Responsible ... admits the EAD Rule violation after being confronted with the EAD violation by the FEI, the period of ineligibility may start as early as the date of Sample collection ...*" The Appellant did not request an anticipated commencement before the FEI Tribunal, however, he requested that in the Appeal Brief. In accordance with the Rule R57 (Scope of Panel's Review, Hearing) of the Code that "*The Panel shall have full power to review the facts and the law ...*" the Panel considers Appellant's arguments in respect of commencement date of the suspension as put in the Appeal Brief and at the hearing relevant, persuasive and stronger than those of the Respondent.

10.2 The Panel accepts the Respondent's argument that the FEI decision was made under the assumption that the Appellant had not complied with provisional suspension, because he was competing after the notification of the violation.

10.3 However, the Panel accepts the Appellant's explanation that (i) the national federation information relating to his participation at the events was ambiguous, (ii) he stopped competing when he received a correct response and (iii) fairness requires the Panel to discount these additional weeks. This approach is supported by CAS jurisprudence (Squizzatto, at 10.31) and the ambit of Article 10.9.1. Though the provision relates to delays not attributable to the person responsible it supports the decision of the Panel in respect of fairness concerning commencement of the ineligibility period, namely sample test results were

available to the FEI on 28 January 2011, the notification of suspension to the athlete was made on 21 February 2011, immediately the next followed by his written statement and waiving the B sample test on 23 February 2011. Until 16 May 2011, the Appellant did not receive the answer whether he could compete and waited until 4 August 2011 when he received the award.

10.4 According to the above, the Panel finds that the ineligibility period should start on 13 January 2011, when the Horse was selected for blood sample testing, and will end 12 January 2013.

11 COSTS

11.1 Pursuant to Article R65.1 of the CAS Code, disciplinary cases of an international nature shall be free of charge, except for the Court Office fee to be paid by the Appellant and retained by the CAS.

11.2 Article R65.3 of the CAS Code provides that the Panel shall decide which party shall bear the costs of the parties, witnesses, experts and interpreters, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

11.3 As this is a disciplinary case of an international nature, which was brought to CAS by the Athlete further to an award issued by the LAF with respect to an international level athlete, the proceedings will be free, except for the minimum Court Office fee, already paid by the Appellant, which is retained by the CAS.

11.4 With regard to the parties' costs, having taken into account the outcome of the arbitration, the conduct and the financial resources of the parties, the Panel finds it to be appropriate and fair that each party bears its own expenses that it has incurred in connection with these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Omran Ahmed Al Owais is partially upheld.
2. The FEI Tribunal Decision of 4 August 2011 is amended as follows: The period of two years ineligibility shall commence on 13 January 2011.
3. The other items of the FEI Tribunal Decision are confirmed.
4. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 already paid by the Appellant and which is retained by CAS.
5. Each party shall bear its own costs incurred in connection with this procedure.
6. All further and other claims for relief are dismissed.

Done in Lausanne, 5 April, 2012

Peter **Grilc**
President of the Panel