



DECISION of the FEI TRIBUNAL

dated 21 September 2017

Positive Anti-Doping Case No.: 2017/BS09

Horse: TARIFA **FEI Passport No:** POR02414/QAT

Person Responsible/NF/ID: Matter Said Khalfan Al Saadi/OMA/10146908

Support Personnel/NF/ID: Waleed Said Khalfan Al Saa'di/QAT/10113272

Event/ID: CEI1*80 Doha, Mesaieed (QAT) - 2017_CI_1543_E_S_02_01

Date: 7 January 2017

Prohibited Substance: Diisopropylamine

Alleged Violation PR:

The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample (Article 2.1 EAD Rules)

Alleged Violation Support Personnel:

Use or Attempted Use of a Banned Substance or a Banned Method (Article 2.2 EAD Rules)

AND

Positive Anti-Doping Case No.: 2017/BS10

Horse: R S NUBE BLANCA **FEI Passport No:** 104DP13/ARG/QAT

Person Responsible/NF/ID: Gaje Singh Hari Singh/IND/10113174

Support Personnel/NF/ID: Waleed Said Khalfan Al Saa'di/QAT/10113272

Event/ID: CEI2*120 Doha, Mesaieed (QAT) - 2016_CI_1818_E_S_01_01

Date: 19 November 2016

Prohibited Substance: Diisopropylamine

Alleged Violation PR:

The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample (Article 2.1 EAD Rules)

Alleged Violation Support Personnel:

Use or Attempted Use of a Banned Substance or a Banned Method (Article 2.2 EAD Rules)

AND

Positive Anti-Doping Case No.: 2017/BS11

Horse: ACQUA VELA

FEI Passport No: 104PE12/QAT

Person Responsible/NF/ID: Maryam Ahmad S A Al Boinin/QAT/10115570

Support Personnel/NF/ID: Waleed Said Khalfan Al Saa'di/QAT/10113272

Event/ID: CEIYJ1*90 Doha, Mesaieed (QAT) - 2016_CI_1818_E_YJ_01_01

Date: 19 November 2016

Prohibited Substance: Diisopropylamine

Alleged Violation PR:

The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample (Article 2.1 EAD Rules)

Alleged Violation Support Personnel:

Use or Attempted Use of a Banned Substance or a Banned Method (Article 2.2 EAD Rules)

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, chair
Mr. Henrik Arle, member
Mr. Erik Elstad, member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the Case File, as also made available by and to the PRs of all three cases and to the Support Personnel.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Articles of the Statutes/Regulations:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2016, Art. 1055 and seq.

Veterinary Regulations ("**VRs**"), 13th edition, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible TARIFA case: Mr. Matter Said Khalfan Al Saadi

3. Person Responsible R S NUBA BLANCA case: Mr. Gaje Singh Hari Singh

4. Person Responsible ACQUA VELA case: Mr. Maryam Ahmad S A Al Boinin

5. Support Personnel (in all three cases): Mr. Waleed Said Khalfan Al Saa'di

6. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2: "*Persons Responsible* and their *Support Personnel* shall be 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*.

Where *Banned Substances* or *Banned Methods* are involved, the following shall constitute *EAD Rule* violations:

2.1 The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample

2.1.1 It is each *Person Responsible's* 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 – 2.8 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." (...)

2.2 Use or Attempted Use of a Banned Substance or a Banned Method

2.2.1 It is each *Person Responsible's* personal duty, along with members of their *Support Personnel*, to ensure that no *Banned Substance* enters into the *Horse's* body. 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 an *EAD Rule* violation for *Use* of a *Banned Substance* or *Banned Method*."

Definition of Support Personnel, Appendix 1 of the EADCMRs:

Any coach, trainer, athlete, *Horse* owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a *Person Responsible* participating in or preparing for equine sports *Competition*. Veterinarians are included in the definition of *Support Personnel* with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an *EADCM Regulation* will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation.

EADCMRs APPENDIX 1 – Definitions:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Person Responsible* and/or member of the *Support Personnel's* degree of Fault include, for example, the *Person Responsible's* and/or member of the *Support Personnel's* experience, whether the *Person Responsible* and/or member of the *Support Personnel* is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the *Person Responsible* and/or member of the *Support Personnel* and the level of care and investigation exercised by the *Person Responsible* and/or member of the *Support Personnel* in relation to what should have been the perceived level of risk. In assessing the *Person Responsible's* and/or member of the *Support Personnel's* degree of Fault, the circumstances

considered must be specific and relevant to explain the Person Responsible's and/or member of the Support Personnel's departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

"No Fault or Negligence. 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 or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."

"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his 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. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 The horse TARIFA participated at the CEI1*80 in Doha, Mesaieed, Qatar on 7 January 2017 (the **"Event in the TARIFA case"**), in the discipline of Endurance. The horse TARIFA was ridden by Mr. Matter Said Khalfan Al Saadi who is the Person Responsible in accordance with Article 118.3 of the GRs (the **"PR in the TARIFA case"**). The horses R S NUBE BLANCA and ACQUA VELA (together with the horse TARIFA **"the Horses"**) participated at the CEI2*120 and at the CEIYJ1*90 in

Doha, Mesaieed, Qatar respectively, on 19 November 2017 (together with the Event in the TARIFA case the "**Events**"), in the discipline of Endurance. The horse R S NUBE BLANCA was ridden by Mr. Gaje Singh Hari Singh who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR in the R S NUBE BLANCA case**"). The horse ACQUA VELA was ridden by Mr. Maryam Ahmad S A Al Boinin who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR in the ACQUA VELA case**") (together with the PR in the TARIFA case "**the PRs**").

- 1.2 Urine and blood samples taken from the Horses at the Events have been analysed at the FEI approved laboratory, the Laboratoire des Courses Hippiques (LCH) (the "**Laboratory**") in Verrières le Buisson, France, and resulted in positive findings for Diisopropylamine in the urine in all three cases.
- 1.3 The Prohibited Substance detected is Diisopropylamine. Diisopropylamine is a vasodilator used in treatment of peripheral and cerebral vascular disorders and is classified as Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive findings for Diisopropylamine in the Horses samples gives rise to Anti-Doping Rule violations under the EAD Rules.
- 1.4 Mr. Waleed Said Khalfan Al Saa'di ("**Mr. Al Saa'di**" or "**Support Personnel**" or "**Trainer**") is the registered Trainer for the horses R S NUBE BLANCA and ACQUA VELA (although a different trainer has been registered for the latter horse for the event in question).
- 1.5 Furthermore, at a later point in time it has been confirmed that Mr. Al Saa'di is also the trainer of the horse TARIFA (although his brother has been registered as trainer at the Event in the TARIFA case).

2. The Further Proceedings

- 2.1 On 8 February 2017, the FEI Legal Department officially notified each of the PRs individually through their respective National Federations, *i.e.*, the Oman National Federation ("**OMA-NF**") Indian National Federation ("**IND-NF**") and the Qatar National Federation ("**QAT-NF**"), and the Owners of the Horses, of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letters included notice that the PRs were provisionally suspended and granted them the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letters further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horses were provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 8 February 2017, until 7 April 2017. The above Provisional Suspensions of the Horses have not been challenged, and the Horses have served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letters of 8 February 2017, the PRs and the Owners of the Horses were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 Neither the PRs nor the Owners of the Horses asked for the B-Sample to be analysed, and they all thus accepted the respective results of the A-Sample analysis.

4. Proceedings against the Trainer

- 4.1 The alleged violation of Use or Attempted Use of a Banned Substance (Article 2.2 EAD Rules) with regard to the horses R S NUBE BLANCA and ACQUA VELA was officially notified to Mr. Al Saa'di, through the QAT-NF on 9 February 2017. The Notification Letter included notice that Mr. Al Saa'di was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 4.2 The Notification Letter reads as follows with regard to the alleged Article 2.2 of the EAD Rule violation:

*"In the course of the Anti-Doping procedure against the Persons Responsible in the above referenced anti-doping case involving the **Horses R S NUBE BLANCA** and **ACQUA VELA** ("**the Horses**"), you were the registered **Trainer** for both Horses at the time of the Event. (Annex 1)*

Please be advised that analysis of the above-referenced Sample has revealed the presence of Diisopropylamine which is a Prohibited Substances under the Equine Prohibited Substances List (the "List").

(...)

The FEI hereby notifies you that it is asserting a violation of Article 2.2 of the FEI Equine Anti-Doping Rules ("EAD Rules") against you as Additional Person Responsible and member of the Support Personnel for the Person Responsible based on the presence of the above-referenced Prohibited Substance in the Horse's Sample."

5. Written submissions by the PRs

- 5.1 Between 16 and 19 February 2017, each of the three PRs provided a statement. In essence, all of them explained that they did not know how the Diisopropylamine entered the respective horse's system. That they had had no involvement with the Horses' preparations.

Further, that they knew that according to FEI rules they were the PRs and that they "should take all the sanctions" concerning the positive cases, but that they had just competed with the Horses as requested by the Trainer.

- 5.2 In addition, the PRs explained that the Trainer – next to the three positive cases with the same product – had also had an additional positive case on 10 December 2016 with the horse Queops De Varneuil (2017/FT08 Salicylic Acid). Further that they would like to cooperate but that they could not because they had no idea how the substance entered the Horses' systems. Finally, that they never had a positive case before and if they would have known that the Horses were "doped", they would have refused to ride them. That the Trainer had four (4) positive cases in three (3) months, and that they were therefore victims.
- 5.3 The PR in the TARIFA case furthermore explained that the Trainer was his brother, and that he had asked him to put his name down as trainer for the horse TARIFA, since he had been banned from the QAT-NF as a trainer. Further, since the Trainer was his brother, he did not think that he was going to put him in trouble. The PR's in the other two cases confirmed that the PR of the TARIFA case, *i.e.*, the brother of the Trainer, had to become "officially" the trainer of that horse prior to the ride as the QAT-NF had suspended the Trainer.

6. Written submission by the Trainer

- 6.1 On 13 April 2017, the Trainer submitted a joint statement for all three cases. He stated as follows:

"The horses had no veterinary. I started looking after the horses and train them in October 2016

No special food was given to the horses. Only normal food from a local provider.

In the last months, the horses were treated when necessary within the correct detection time with Flumetasone.

The Diisopropylamine was probably included in a product that I used: "Energético Nort" but I wasn't aware it was in there an. It was given orally to the horses 1 hour before starting the ride. I gave this product to the horses, to help them to relax and to keep their full power for the ride.

The cream Flumetasone was given for local inflammations only.

The horses were staying in a private stable.

I didn't inform the riders that I gave to the horses the "Energético Nort".

After the competition, only normal recovery fluid and massages were given to the horses to recover.

It was my mistake to give to the horses the "Energético Nort" before the rides. I don't have a lot of experience about medicines and specially the "Prohibited Substances".

I am deeply sorry about this situation and I hope you understand that if I knew that my horses were going to be positive, I will have not given this product to 3 different horses. I am also particularly concern about the riders because they were not aware that something wrong could happen to them. My brother is one of the riders and I hope you can believe that I didn't want to put him in trouble."

- 6.2 In addition, he also provided a picture of the product box of the product Energético Nort (the "**product**"), including its ingredient list. While the substance Diisopropylamine is not listed as an ingredient, the product box lists B15 (0.10 g) as an ingredient.

7. Response by the FEI

- 7.1 On 18 July 2017, the FEI submitted separate Responses to the explanations received by each of the PRs and by the Trainer.
- 7.2 With regard to the PRs the FEI submitted in essence that:
- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. "*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*". Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Samples taken from the Horses at the Event confirmed the presence of Diisopropylamine in all three samples, and constituted "sufficient proof" of the violations of Article 2.1 of the EAD Rules. The PRs did not dispute the presence of the Prohibited Substance in the Horses' samples. Accordingly, the FEI has discharged its burden of establishing that each PR has violated Article 2.1 of the EAD Rules.
 - b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence; or alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PRs failed to discharge this burden, the presumption of intentional administration and performance stood.

- c) The FEI submitted in this context that the PRs had to provide clear and convincing evidence that proved how the Diisopropylamine has entered the Horses' samples. In the submissions of the PRs, the Trainer of the Horse admitted to have given the Horse an oral administration of the product "Energético Nort" 1 hour before the ride. However, it required that there was a connection between the product and the Prohibited Substance Diisopropylamine, which was not the case (but see discussion of subsequent information below). The FEI was therefore of the opinion that the PRs had not established how the substance entered the Horses' systems.
- d) In terms of the degree of Fault and Negligence by the PRs for the rule violations, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PRs for the rule violations was the "*personal duty*" of the PRs following from Article 2.1.1 of the EAD Rules, *i.e.*, their personal duty to ensure that "*no Banned Substance is present in the Horse's body*".
- e) It had been stated in several cases that a PR could not rely on any other person to perform his duty of care. The CAS jurisprudence (CAS 2013/A/3318 Stroman v. FEI) was clear in that "*the duty of caution or due-diligence is non-delegable*." For example, it was not possible for a Person Responsible to rely on or blame any other person, for the positive case.
- f) Further that, according to CAS jurisprudence (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI), the rider was, no matter what, the Person Responsible for the horse he was competing with, and could not delegate that duty to another person. That the PRs therefore had an obligation to ensure that no Prohibited Substance entered into the Horses' systems, and had to act with utmost caution in order to fulfil this duty. The FEI also pointed out that what the PRs did not do was as fatal to their duty as what they did do, and that a lack of awareness of the violations on their part was no defence to the EAD rule violations in question.
- g) Furthermore, that making the PRs *prima facie* responsible for the condition of the Horses while competing, subject to their ability to prove they bear No (Significant) Fault or Negligence for the Horses' "doped condition", was a reasonable and justifiable stance. In this respect, CAS had endorsed – in its decision previously mentioned, *i.e.*, CAS 2015/A/4190 – the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision stated as follows (at para 57):

"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument

"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the

rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"

The Sole Arbitrator respectfully agrees."

- h) Moreover, the FEI submitted that the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. That it had to be noted in this context that in the Glenmorgan decision (CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI) CAS has stated that the Athlete's Guide *"contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form"* describing the Athlete's Guide as *"required reading"*.
- i) In the case at hand, the Trainer admitted having orally administered the product "Energético Nort" to the Horses 1 hour prior to the rides, but neither he or any of the PRs provided any evidence to support this action, such as the medication logbook or a veterinary prescription for the Horses. The Trainer had not investigated further if the product could have been the reason for the positive finding by analysing the product or by investigating among veterinarians and the producer of the product (but see discussion below). The Trainer had confirmed that he had not informed the PRs about the administration of the product. He further explained that the Horses were treated within the correct detection time earlier, when using Flumetasone.
- j) The FEI argued that in its best knowledge the PRs did not do any further investigations nor require any information about the Horses such as requesting the medical logbook or any further information. The PRs confirmed that they are aware of the FEI rules. Furthermore, the FEI argued that from an FEI perspective, the most important fact was, that the PRs could not rely on any other person to perform their duties of care. Therefore, the PRs explanations do not relieve them from their personal duty and responsibilities under the EAD Rules and nor would they provide a valid excuse for the positive findings. The PRs and Trainer had so far not provided a plausible explanation of how the Prohibited Substances could have entered the Horses' systems. The FEI invited the PRs/Trainer to provide further evidence in this respect.
- k) In addition, the FEI submitted that the PRs have not proved that they acted with utmost caution in order to avoid a positive case. They had not provided any information in this regard, and it was for the PRs to demonstrate that they have not been at fault for the rule violation, and as stated in the case law this burden of proof was very high. The FEI submitted that the PRs have not submitted anything in

order to show that they were not at fault for the rule violation. Since the PRs have not established that they bore no fault or negligence for the rule violations, no reductions of the period of Ineligibility under Article 10.4 or 10.5 of the EAD Rules was possible. The FEI therefore respectfully submitted that the applicable period of Ineligibility had to be two (2) years with respect to all three PRs.

- l) Pursuant to Article 9 of the EAD Rules, the results of the PRs and Horses combination obtained in the Competitions shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. Furthermore, since these were cases with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible's individual results obtained in those Events, with any and all Horses with which the Persons Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules.
- m) As fairness did not dictate that no fine be levied in the cases at hand, the FEI duly requested that a fine be imposed on the PRs, and that the PRs were ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined each of the PRs in the amount of 2 500 CHF, and ordered each of the PRs to pay the legal costs of 1 000 CHF that the FEI has incurred in these proceedings.

7.3 With regard to the Trainer the FEI submitted in essence that:

- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.2 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.2"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's Sample.
- b) The Trainer of a horse counted as Support Personnel in accordance with the definition outlined in the EADCMRs since he has been *"assisting in any fashion a Person Responsible participating in or preparing for equine sports"* and could therefore be considered as an additional Person Responsible for the Horse. According to Article 2.2.1 of the EAD Rules *"It is each Person Responsible's personal duty, along with members of their Support Personnel, to ensure that no Banned Substance entered into the Horse's body and that no Banned Method is Used"*.
- c) Further, the Trainer admitted that he has administered the product "Energético Nort" to the Horses 1 hour before the rides, wherefore Article 2.5 of the EAD Rules, *i.e.*, Administration, could also be applied.

- d) That in any event, the Trainer did not dispute the presence of Diisopropylamine in the Horses' Samples. Accordingly, the FEI respectfully submitted that it had discharged its burden of establishing that the Trainer has violated Article 2.2 of the EAD Rules.
- e) Article 10.2 of the EAD Rules provided that a Person Responsible and/or his Support Personnel with no previous doping offence who violated Article 2.2 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or alternatively (iii) that he bears No Significant Fault or Negligence for that occurrence. If the Trainer as additional Person Responsible failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.
- f) The EAD Rules stipulated, and the jurisprudence of the Tribunal and CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/and or his Support Personnel proved how the substance entered into the Horse's system. The FEI submitted in this context that the Trainer as additional Person Responsible must provide clear and convincing evidence that proved how the Diisopropylamine has entered the Horses' system. The FEI was of the opinion that the explanation could be a plausible explanation of how the substance entered the Horses' systems. However, it required that there was a connection between the "Energético Nort" and the Diisopropylamine, which was not the case. The FEI was therefore of the opinion that the Trainer had not established how the substance entered the Horses' systems.
- g) In terms of the degree of Fault and Negligence for the rule violation, the FEI argued that, the starting point of any evaluation was the "personal duty" of the Support Personnel following from Article 2.2.1 of the EAD Rules, i.e., his personal duty to ensure that "no Banned Substance enters into the Horse's body".
- h) Moreover, the FEI submitted that the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. That it had to be noted in this context that in the Glenmorgan decision (CAS 2014/A/3691 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI) CAS has stated that the Athlete's Guide "contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form" describing the Athlete's Guide as "required reading".

- i) The Trainer indicated in his statement that the administration of the Prohibited Substance if it was contained in the product "Energético Nort" was his mistake since he had given it to the Horses before the rides. He further claimed not to have a lot of experience about medicines and specially the Prohibited Substances. The FEI further argued, that although it might be the case that the Trainer had little knowledge and experience, he could not claim that he did not know about the EADCMRs or Prohibited Substances. It was the responsibility of each registered Trainer to know about the rules, and there were several means to find them. In this respect the FEI referred to a previous Tribunal Decision (FEI Tribunal 2014/CM01 dated 25 June 2015; para. 9.12).
- j) In the case at hand, the Trainer admitted having orally administered the product "Energético Nort" to the Horses 1 hour prior to the rides, but he did not provide any evidence to support this action, such as the medication logbook or a veterinary prescription of the Horses. The Trainer had not investigated further if the product could have been the reason for the positive finding by analysing the product or by investigating among veterinarians and the producer of the product. The Trainer had confirmed that he had not informed the PRs about the administration of the product. He further explained that the Horses were treated within the correct detection time earlier, when using Flumetasone.
- k) The FEI argued that in its best knowledge the Trainer did not do any further investigations in relation to the alleged connection between the Energético Nort and the positive findings. Furthermore, the FEI argued that from an FEI perspective, the most important fact was, that the Trainer could not rely on any other person to perform their duties of care; he was responsible for what he was giving to the Horses. Therefore, the Trainers explanations do not relieve him from his personal duty and responsibilities under the EAD Rules and nor would they provide a valid excuse for the positive findings. The Trainer had so far not provided a plausible explanation of how the Prohibited Substances could have entered the Horses' systems. The FEI invited the Trainer to provide further evidence in this respect.
- l) In addition, the FEI submitted that the Trainer has neither proved that he acted with utmost caution in order to avoid a positive case. He had not provided any information in this regard, and it was for the Trainer to demonstrate that he has not been at fault for the rule violation, and as stated in the case law this burden of proof was very high. The FEI submitted that the PRs have not submitted anything in order to show that they were not at fault for the rule violation. Since the Trainer has not established that he bore no fault or negligence for the rule violations, a reduction of the period of Ineligibility under Article 10.4 or 10.5 of the EAD Rules was not possible. The FEI therefore respectfully submitted that the applicable period of Ineligibility had to be two (2) years with respect to the Trainer.

m) As fairness did not dictate that no fine be levied in the case at hand, the FEI duly requested that a fine be imposed on the Trainer, and that the Trainer was ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined the Trainer in the amount of 3'500 CHF, and ordered the PR to pay the legal costs of 1'500 CHF that the FEI has incurred in these proceedings. Finally, the FEI informed that certain parts of the fine contributes to the education within Anti-Doping.

8. Further submissions by the Trainer

- 8.1 Between 18 July 2017 and 8 August 2017, the Trainer re-submitted that the product was the source of the Prohibited Substance. He further submitted that *"the substance (diisopropylamine) connection with the (Energetico nort) is the (B-15)"*. That *"Because the B-15 is the main substance in (diisopropylamine) and its in the paste (Energetico nort)"*. That the *"local vets in Qatar told me that this product is not Doping and it's not positive, and I used the product after they assured to me that it's not positive, as I said to calm the horses for the best interests of the rider and the horse"*.
- 8.2 Furthermore that the stables had no veterinarian, and that the owner had brought in a veterinarian from the outside to check his products – including the product -, and that the veterinarian had *"found no problem with the horse's vitamins and food"*. Further, that according to the veterinarian the product was *"free of steroids and beneficial to horse health"*. That he had trusted the outside veterinarian, since they had had no veterinarian in the stables. That when he had faced a problem with a horse, such as Lumbar or colic, he had gone to the Qatar government hospital with that horse.
- 8.3 The Trainer further explained as follows: *"I used a product after it had been prescribed by the veterinarians. They literally said that the product did not contain any drugs, and that it was very beneficial for horses' health"*. That after some research he had found out that *"the serum I used to calm down the horse was doping, therefore the result showed that the serum contains B15"*.
- 8.4 Finally, the Trainer explained that he and the owner of the stables took care of the horses and their health. That he was very sincere in his equine career, and that because he loved horses and equine sports, he would never on purpose cause any harm to horses or endanger their well-being.

9. Further proceedings

Upon request by the Tribunal to confirm their initial Final Hearing requests, the Trainer stated that he wished no longer for a Final Hearing to take place. The PRs did not confirm their previous

requests for a Final Hearing; thus their right for a Final Hearing is deemed to have been waived.

10. Jurisdiction

The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

11. Persons Responsible

The PRs are the Persons Responsible for the Horses, in accordance with Article 118.3 of the GRs, as they were the riders of the Horse at the Event.

12. The Support Personnel

The Tribunal takes note that the Trainer was the trainer of the Horses. The Trainer therefore qualifies as a member of the Support Personnel in accordance with the EADCMRs (Appendix 1). Furthermore, the Tribunal also takes note that the Trainer has not disputed his status as Support Personnel in the matter at hand.

13. The Decision

- 13.1 As stated in Articles 2.1.2 and 2.2.2 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample where a PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Samples reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Diisopropylamine in the samples taken from the Horses at the Event. Neither of the PRs nor the Trainer did contest the accuracy of the test results or the positive findings. Diisopropylamine is classified as a Banned Substance under the FEI List.
- 13.2 The FEI has therefore established Adverse Analytical Findings, and has sufficiently proven the objective elements of the offences, for all three of the PRs, as well as for the Trainer, in accordance with Articles 2.1 and 2.2 of the EAD Rules.
- 13.3 Regarding the Trainer, the Tribunal holds that the FEI would in addition also have discharged its burden of establishing that the Trainer has violated Article 2.5 of the EAD Rules (Administration or Attempted Administration of a Banned Substance), if the Trainer was charged with this alleged violation, which is not the case in the case at hand. The Tribunal finds that the statements by the Trainer himself regarding his

administration of the product which most likely contained Diisopropylamine (as decided by the Tribunal further below) orally to the Horses 1 hour prior to the ride, could evidence a violation by the Trainer of Article 2.5 of the EAD Rules. However, since the FEI has established an Article 2.2 violation of the EAD Rules, it is irrelevant in the case at hand whether the FEI would also have discharged its burden of establishing that the Trainer violated Article 2.5 of the EAD Rules.

- 13.4 In cases brought under Articles 2.1 and 2.2 of the EAD Rules a strict liability principle applies as described in Articles 2.1.1 and 2.2.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR and a member of Support Personnel have the burden of proving that they bear "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules.
- 13.5 To start with, the Tribunal takes note of the PRs' and Trainer's explanations on how the Diisopropylamine had entered the Horses' systems, namely by the Trainer administering the product orally to the Horses 1 hour prior to the respective ride in order to help them relax and to keep their full power for the ride. The Tribunal takes further note of the Trainer's explanation that the B-15 contained in the product was the main substance in Diisopropylamine. The Trainer has however not provided any further explanations/evidence in this respect. A quick internet search shows that Diisopropylamine dichloroacetate is "*the active component of many formulations of pangamic acid (trade-named "vitamin B15")*"¹. The Tribunal believes that it is more likely than not that the Diisopropylamine entered the Horses' systems as explained by the Trainer. However, since the Tribunal finds – as outlined further below – that, the PRs and the Trainers have been negligent with their expected duty of care, it is ultimately not relevant whether or not the PRs and Trainer have established how the Diisopropylamine has entered the Horses' systems.
- 13.6 In a further step the Tribunal examines the question of "No Fault or Negligence" or "No Significant Fault or Negligence" of the PRs and of the Trainer for the rule violations.
- 13.7 In accordance with Articles 2.1.1 and 2.2.1 of the EAD Rules, the Tribunal considers that it is the PR's and Trainer's personal duty to ensure that no Banned Substance is present in the Horse's body at any time. Under the EAD Rules the PR and his or her support personnel are held strictly liable for the condition of the horse. CAS (CAS 2015/A/4190 - Mohammed Shafi Al Rumaithi v. FEI) has confirmed the FEI's policy in making the rider the Person Responsible. The Tribunal agrees with CAS and the FEI's policy. The Tribunal therefore also holds that "*making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play.*" Furthermore, the Tribunal also finds that "*It strongly incentivises riders to ensure*

¹ <https://www.ncbi.nlm.nih.gov/pubmed/6752894>

compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse”.

13.8 Furthermore, both - CAS, as well as the Tribunal - have accepted this reasoning in the past and upheld the lawfulness of this approach, and thus rejected riders arguments that they should not be held responsible for the condition of the horse if they can show that they did not control the horse's care and preparation for competition. The Tribunal finds that this is necessary in order to achieve the imperatives underlying the EAD Rules.

13.9 However, the degree of fault must be decided individually for (each) of the PRs and for their support personnel, *i.e.*, the Trainer in the case at hand. In its decision (CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI) CAS noted as follows (at paras 153 and 159):

"The fact that riders will in different situations and having varying degrees of involvement with the horse and its preparations is inevitable and the rules can no doubt produce harsh outcomes in certain circumstances”.

13.10 The Tribunal finds that in the present case the PRs and the Trainer have all acted with negligence in performing their duties as riders and member of Support Personnel as outlined below.

13.11 In line with its previous decisions, the Tribunal holds that the PRs cannot be totally discharged from their duties – their personal duty as riders – even when not having been in charge of preparing the Horses, and even when not having had any connection to the Horses prior to the Events, which seems to be the case in the cases at hand. It is the PRs' duty as competitors to make inquiries whether the Horse was free of Prohibited Substances, and put measures in place to assure that they are informed of all medications administered to the Horses. In the cases at hand however none of the PRs seem to have made any inquiries or put any such measures in place.

13.12 Accordingly, the Tribunal finds that the PRs have acted with negligence in performing their duties as competitors. The Tribunal therefore concludes that no reduction of the otherwise applicable period of Ineligibility in accordance with Articles 10.4 and 10.5 of the EAD Rules is warranted.

13.13 With regard to the Trainer, the Tribunal holds that he was for several reasons highly negligent in performing his duties as a member of Support Personnel. The Tribunal takes note that the Trainer asserts that he relied on the veterinarians who had *"found no problem with the horse's vitamins and food"*, including the product. If that is so then the veterinarians were wrong, which is surprising. However simply relying

on questioning veterinarians is not by itself sufficient to fulfil the Trainer's expected duty of care, at least when checking personally is not difficult and the ingredients listed on the packet indicate a possibility of a banned substance. In line with its previous decisions, the Tribunal finds that he could reasonably be expected to research the product prior to administering it to the Horses on the days of the rides. Had he done such research – as was the case following the notification of the positive findings, and as confirmed by the Tribunal itself with a simple internet search – he would have found out that "*Diisopropylamine dichloroacetate is "the active component of many formulations of pangamic acid (trade-named "vitamin B15")"*", and thus that the product contained a Banned Substance.

- 13.14 The Tribunal also took note of the Trainer's claim that he does not have a lot of experience with medicines and especially Prohibited Substances. The Tribunal finds that this is even more reason to not administer any medicines to horses, and further to conduct additional research on any products prior to administering them to any horse if necessary. Furthermore, in line with its previous decisions, the Tribunal finds that riders, as well as Support Personnel, participating in FEI competitions have to make themselves familiar with the respective rules and regulations, including the EADCMRs, as well as the FEI List, and comply with them accordingly.
- 13.15 According to the PRs, the Trainer seems to – in addition – have been involved in a positive Controlled Medication case around the same time as the cases at hand. The Tribunal finds that the Trainer seems to have taken on tasks, *i.e.*, handling the medications of several horses, for which he was clearly not prepared; or as he puts it himself, tasks for which he did not have the necessary experience. As a result he contributed to at least three (3) *i.e.*, the cases at hand, and potentially four (4) positive cases, *i.e.*, when counting the Controlled Medication case in addition.
- 13.16 Accordingly, the Tribunal finds that the Trainer has acted highly negligently in performing his duties as trainer and Support Personnel. It further notes that this conduct is aggravated by his using his brother's name when not eligible to train under his own name. The Tribunal therefore concludes that no reduction of the otherwise applicable period of Ineligibility in accordance with Articles 10.4 and 10.5 of the EAD Rules is warranted.

14. Disqualification

For the reasons set forth above, the Tribunal disqualifies the Horses and the PRs combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.

15. Sanctions

- 15.1 Article 10.2 of the EAD Rules foresees a sanction of two (2) years period of Ineligibility for an Article 2.1 EAD Rule violation, as well as for an Article 2.2 EAD Rule violation. Article 10.7 of the EAD Rules opens for an increase of the Period of Ineligibility if aggravating circumstances are present as in the present case of the Trainer.
- 15.2 The Tribunal therefore imposes the following sanctions on the PRs and the Trainer, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The **PR in the TARIFA case** – Mr. Matter Said Khalfan Al Saadi - shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 8 February 2017, the date of imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR in the TARIFA case will be ineligible **through 7 February 2019**.
 - 2) The **PR in the R S NUBE BLANCA case** – Mr. Gaje Singh Hari Singh - shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 8 February 2017, the date of imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR in the R S NUBE BLANCA case will be ineligible **through 7 February 2019**.
 - 3) The **PR in the ACQUA VELA case** – Mr. Maryam Ahmad S A Al Boinin - shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 8 February 2017, the date of imposition of the Provisional Suspension, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR in the ACQUA VELA case will be ineligible **through 7 February 2019**.
 - 4) The **Trainer** – Mr. Waleed Said Khalfan Al Saa'di - shall be suspended for a period of **thirty (30) months**. The period of Provisional Suspension, effective from 9 February 2017, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the Trainer will be ineligible **through 8 August 2019**.
 - 5) A fine in the amount of **two thousand Swiss Francs (CHF 2'000,-)** shall be imposed on each of the three PRs.
 - 6) A fine in the amount of **three thousand Swiss Francs (CHF 3'000,-)** shall be imposed on the Trainer.
 - 7) Each of the three PRs shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of this procedure.

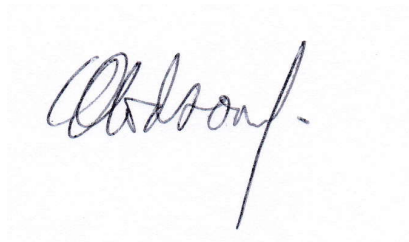
8) The Trainer shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of this procedure.

- 15.3 No Person Responsible or member of the Support Personnel, who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or in a Competition or activity that is authorized or organized by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.11.1 of the EAD Rules).
- 15.4 Where a Person Responsible or member of the Support Personnel who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the EAD Rules).
- 15.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 15.6 In accordance with Article 12 of the EAD Rules, the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The PRs and the Support Personnel: Yes**
- b. The President of the NFs of the PRs and the Support Personnel: Yes**
- c. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Chris Hodson", is centered on the page. The signature is written in a cursive, flowing style.

THE CHAIR, Mr. Chris Hodson QC