

**DECISION of the FEI TRIBUNAL  
dated 18 December 2019**

**Positive Banned Substance Case No.:** 2018/BS10

**Horse:** FLOR DEL CARIBE

**FEI Passport No:** 105BN98/UAE

**Person Responsible/NF/ID:** Federica ROSSI/ARG/10066438

**Trainer/NF/ID:** Abdullah Hasan AL HAMMADI/UAE/10048637

**Event/ID:** CEI3\* 160 – Abu Dhabi, Al Wathba (UAE)/2018\_CI\_0525\_E\_S\_01\_01

**Date:** 10 February 2018

**Prohibited Substance:** GW1516, GW1516 SULPHONE

**I. COMPOSITION OF PANEL**

Mr. Chris Hodson QC, one member panel

**II. SUMMARY OF THE FACTS**

**1. Memorandum of case:** By Legal Department.

**2. Summary information provided by Person Responsible (PR):**

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 PR.

**3. Oral hearing:** none.

**III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**1. Articles of the Statutes/Regulations which are applicable:**

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

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Ms. Federica Rossi.

**3. 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)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

**EAD Rules Art. 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."

**EAD Rules Art. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

## IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

### 1. Factual Background

- 1.1 FLOR DEL CARIBE (the "**Horse**") participated at the CEI3\* 160 in Abu Dhabi, Al Wathba, United Arab Emirates (UAE), on 10 February 2018 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Ms. Francesca Rossi, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event on 10 February 2018. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, The Hong Kong Jockey Club, in Hong Kong (the "**Laboratory**") analysed the Horse's blood sample number 5560196 (the "**A-sample**") and reported an adverse analytical finding of GW1516 and GW1516 SULFONE.
- 1.4 GW1516 and GW1516 SULPHONE are anabolics used to increase the horse's exercise capacity, and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding for these substances in the A-sample gives rise to an EAD Rule violation under the EADCMRs.

### 2. The Further Proceedings

- 2.1 On 19 March 2018, the FEI Legal Department officially notified the PR, through the National Federation of Argentina ("**ARG-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**"). The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 19 March 2018, until 18 May 2018. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

### **3. The B-Sample analysis**

- 3.1 The PR was informed that she was entitled to request an analysis of the B-sample in the Notification Letter. The PR did not request for the B-sample to be analysed. The PR has neither challenged the A-sample analysis results.

### **4. Written submission by and on behalf of the PR**

- 4.1 On 8 May 2018, the PR submitted her explanations for the positive finding.
- 4.2 She stated that she had been registered with the FEI as a rider for the past seven (7) years, without any previous offence of any FEI rules and regulations.
- 4.3 Furthermore, she confirmed that she was aware of FEI rules and regulations, including the EADCMRs. She always checked the necessary information from trainers and veterinarians prior to taking part in FEI events.
- 4.4 Moreover, she was not an employee of the Al Reef Stables, *i.e.*, the stables where the Horse was stabled, and was riding only on trainer/owner's request in national and FEI rides. She did her best to be informed about everything concerning the horse, asking about its training, veterinary records, as well as being in touch with the trainers and vets to make sure that everything regarding the horse, his athletic condition, soundness and safety were optimal for the welfare of the horse and for her personal safety. She had therefore done all what was under her possibilities to make sure there was no irregular situations involving the horse or the team that works with the horse on a daily basis.
- 4.5 Finally, for this particular ride, she did not see any abnormal situation involving the Horse or any one of the persons of the crew, veterinarians or persons belonging to the Al Reef Stables team.
- 4.6 Together with her explanations, the PR also submitted a Veterinary Report for the Horse during the period from 17 December 2017 to 21 February 2018. The report contained clinical examinations and treatments provided to the Horse throughout this period. However, the Banned Substances in question in the case at hand were not reported to have been administered to the Horse.

## **5. Written Response by the FEI**

5.1 On 20 November 2019, the FEI provided its Response in this case.

5.2 The FEI submitted that:

- a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
- b) The elements of an Article 2.1 violation are 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 is 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-sample taken from the Horse at the Event confirmed the presence of GW1516 and GW1516 SULPHONE and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of GW1516 and GW1516 SULPHONE in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
- c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EADM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless she is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.
- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the GW1516 and GW1516 SULPHONE have entered the Horse's system. In this case the PR has not provided any plausible information on how the substance could have entered the Horse. The threshold requirement for proving how the substance entered the Horse's system has, therefore,

not been fulfilled.

- e) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse.
- f) Since the PR has not established how the prohibited substances entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the PR.
- g) The FEI has carefully evaluated the PR's explanations of the case. This information has however not been supported by any evidence, such as statements from the trainer or veterinarians, nor any supporting witnesses, and can therefore not be evaluated. The veterinary record of the Horse does not include any information that could account for the Prohibited Substances in the sample. On the contrary, the FEI found it worrying that the PR chose to compete with a horse that had such a long history of treatment and lameness only months prior to the Event.
- h) The FEI respectfully requested that the Tribunal issue a decision:
  - (i) upholding the charge that the PR violated Article 2.1 of the EAD Rules;
  - (ii) disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;
  - (iii) imposing a period of Ineligibility of two (2) years on the PR, commencing from 19 March 2018 (the date upon which the Provisional Suspension was imposed);
  - (iv) fining the PR in the amount of 7 500 CHF; and
  - (v) ordering the PR to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

## **6. Further proceedings**

- 6.1 On 13 December 2019, upon receipt of this Case File, the Tribunal granted the PR a further and final deadline to supplement her written explanations. The Tribunal further advised the PR that she could request a hearing.
- 6.2 The PR, however, did not supplement her submission, nor request for a hearing to be held.

## **7. Jurisdiction**

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

## **8. The Person Responsible**

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she was the Horse's rider at the Event.

## **9. The Decision**

- 9.1 As set forth in Article 2.1 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. The Tribunal is satisfied that the laboratory reports relating to the A-Sample 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 GW1516 and GW1516 SULPHONE in the sample taken from the Horse at the Event. The PR did not challenge the test results. GW1516 and GW1516 SULPHONE are Prohibited Substances under the FEI List and the presence of GW1516 and GW1516 SULPHONE in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 9.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 9.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that she bears "*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.
- 9.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substances entered the Horse's system.

- 9.6 To start with, the Tribunal has taken note of the PR's explanations with regard to the positive finding. The PR has not provided any explanation as to how the GW1516 and GW1516 SULPHONE entered the Horse's system. Neither does the Medical Report of the Horse in the lead up to the Event contain any information that the Horse was administered the substances in question.
- 9.7 As a result, the Tribunal holds that the PR has not established – on a balance of probability, as required under Article 3.1 of the EAD Rules – how the GW1516 and GW1516 SULPHONE has entered the Horse's system.
- 9.8 The Tribunal therefore finds that Articles 10.4 and 10.5 of the EAD Rules cannot be applied in the case at hand. Furthermore, the Tribunal notes that the PR does not claim the applicability of Article 10.6 of the EAD Rules.
- 9.9 From the foregoing, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
- 9.10 The Tribunal takes note that the PR has been provisionally suspended since 19 March 2018, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension; at least the Tribunal has not been provided with information otherwise.
- 9.11 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

## **10. Disqualification**

- 10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

## **11. Sanctions**

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

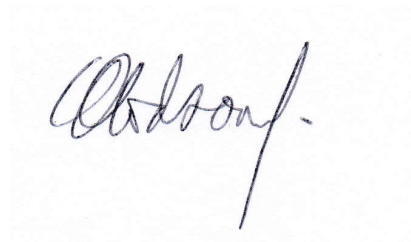


- 1) The PR shall be suspended for a period of **two (2) years**, the period of Provisional Suspension, effective from 19 March 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 18 March 2020**.
  - 2) The PR is fined **seven thousand five hundred Swiss Francs** (CHF 7,500.-).
  - 3) The PR shall contribute **two thousand Swiss Francs** (CHF 2,000.-) towards the costs of these proceedings.
- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised 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 in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
- 11.4 Where a Person Responsible 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 10.11.3 of the EAD Rules).
- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.6 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 person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**

A handwritten signature in blue ink, appearing to read "Chris Hodson", is centered within a light gray rectangular box.

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**Chris Hodson QC, one member panel**