



## **DECISION of the FEI TRIBUNAL**

**dated 31 July 2009**

**Positive Medication Case No.:** 2009/12

**Horse:** TAHHAN

**FEI Passport No:** UAE40320

**Person Responsible:** Sheikh Mohammed Bin Rashid Al Maktoum

**Additional Person Responsible:** Abdullah Saeed bin Huzaim

**Event:** CEI 2\* 120km, Sakhir, BRN; CEI 2\* 120km, Dubai, UAE

### **Prohibited Substances:**

Guanabenz, 16-b Hydroxy-Stanozolol (CEI 2\* 120km, Sakhir, BRN);

Guanabenz (CEI 2\* 120km, Dubai, UAE)

## **1. COMPOSITION OF PANEL**

Mr. Patrick A. Boelens  
Mr. Philip O'Connor  
Mr. Erik Elstad

## **2. SUMMARY OF THE FACTS**

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

**2.2 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.

**2.3 Oral hearing:** None: by correspondence.

## **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

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

Statutes 22<sup>nd</sup> edition, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

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

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

**3.2 Person Responsible:** Mohammed Bin Rashid Al Maktoum

**3.3 Justification for sanction:**

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

GR Art. 118 para. 3: "The Person Responsible shall be the Athlete who rides 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 Person Responsible if they are present at the Event or have made a relevant Decision about the Horse."

## **4. DECISION**

### **4.1 Factual Background**

1. TAHHAN (the "**Horse**"; former name "NUCUI ROMAS") participated at the CEI 2\* 120km in Sakhir, Bahrain, on 10 January 2009 (the "**Event 1**"), and at the CEI 2\* 120km in Dubai, United Arab Emirates, on 28 February 2009 (the "**Event 2**"), in the discipline of Endurance. In both Events, the Horse was ridden by Sheikh Mohammed Bin Rashid Al Maktoum, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").

2. The Horse was selected for sampling on 10 January 2009 and on 28 February 2009.
3. Analysis of the urine sample no. FEI-0076544 taken from the Horse at Event 1 performed by the FEI approved laboratory, the Laboratoire des Courses Hippiques ("**LCH**"), in Paris, under the supervision of Dr. Yves Bonnaire, Director of the Laboratory, revealed the presence of Guanabenz and 16-b Hydroxy-Stanozolol (Certificate of Analysis dated 3 February 2009). Analysis of the blood sample no. FEI-0092892 taken from the Horse at Event 2 performed by the FEI approved laboratory, Hong Kong Jockey Club Racing Laboratory ("**HKJC**"), under the supervision of Mr. Wai Him KWOK, Chemist, and Mr. Terence See Ming WAN, Head of Racing Laboratory, revealed the presence of Guanabenz (Test Report no. 09-0309 dated 13 March 2009).
4. Therefore, the Prohibited Substances detected are Guanabenz and 16-b Hydroxy-Stanozolol. Guanabenz is an alpha-2 adrenoceptor agonist which is used in the management of hypertension in humans and has calming and analgesic effects. 16-b Hydroxy-Stanozolol is a metabolite of Stanozolol, which is an anabolic steroid with anabolic and androgenic effects. Guanabenz and 16-b Hydroxy-Stanozolol are both classified as "Prohibited Substances" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "*Doping*".
5. No request had been made in the context of Event 1 to administer Guanabenz or 16-b Hydroxy-Stanozolol to the Horse, and no medication form had been submitted for any of these substances. Similarly, no request had been made in the context of Event 2 to administer Guanabenz to the Horse, and no medication form had been submitted for this substance.

#### **4.2 The Proceedings**

6. By email of 3 April 2009, Ms Rachel D.S. Hood, Counsel for PR, reported to the FEI Legal Department that following routine post-competition testing at one of the PR's stable properties, positive samples revealing Prohibited Substances had been confirmed for the PR's Endurance horses which had competed on 10 January 2009 in Bahrain, on 28 February 2009 in Dubai and during an incomplete National ride on 27 March 2009 in Dubai. The email explained that as the investigations were ongoing, the PR would cooperate with the FEI in every way possible and provide additional information as it became available. Further, the PR stated that he wished to withdraw and disqualify the horses from these races.
7. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PR by the FEI Legal

Department on 6 April 2009.

8. The Notification Letter of 6 April 2009 included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
9. The PR did not request a preliminary hearing.

#### **4.3 The B-Sample Analysis**

10. Together with the Notification Letter of 6 April 2009, the PR also received notice that he was entitled to the performance of B-Sample confirmatory analyses on the positive samples. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Samples.
11. The PR declined to exercise his right to have the B-Sample confirmatory analyses performed.

#### **4.4 The Further Proceedings**

12. On 21 April 2009, the PR submitted his written explanations to the FEI. In his submission, the PR claimed that the notification of the positive A samples was untimely and therefore in breach of Article 7.1.3 EADMCR. The PR contended that the allegedly untimely notification caused material damage to him insofar as he would not have competed at Event 2 in Dubai if he would have had knowledge of the positive test result from Event 1.
13. Together with its explanations, the PR also submitted two documents concerning the medical treatment of the Horse: on the one hand, an untitled document listing the medications received by the Horse under its former name between 8 July 2007 and 18 November 2008 (page 42 to 45 of the Case File, referred to in the following as "Patient History"). On the other hand, a document by the Dubai Equine Hospital being a Day Sheet entry for the period of 1 July 2007 to 20 April 2009 ("Day Sheet Entry").
14. The explanations of 21 April 2009 included a statement by the PR dated 21 April 2009 as well as a draft unsigned statement of the Trainer, Mr. Abdullah bin Huzaim, Trainer and Stable Manager at Emaar Stables. A signed version of the latter statement was ultimately submitted on 22 April 2009 (WS Mr Abdullah bin Huzaim dated 22 April 2009).
15. In a nutshell, the PR submits that he is an amateur rider competing for several stables and that he is typically presented with a choice of which horse to ride on the day of a race. The PR submits that he has an interest in some 700 horses in the field of Endurance Racing

and that he cannot be involved in the medication protocols of each horse. Therefore he contends it is reasonable for the Person Responsible to rely upon the stables, the trainer and the veterinarians to present horses that are fit to ride and which are not in breach of the EADMCRs or other applicable rules and regulations of the FEI. Further, that it was contrary to routine practice in the UAE, particularly for amateur riders, to involve themselves in, or make specific enquiry into the horse's medication, which are matters customarily dealt with by trainers and veterinarians.

16. With respect to the present cases, the PR states that on 10 January 2009 as well as on 28 February 2009 he had been presented with the Horse only some minutes before the race commenced. That he had enquired as to whether all was well with the Horse, and was assured that all was in order. Further, the PR submits that following the positive samples he promptly initiated his own inquiries as to how the Prohibited Substances could have entered into the Horse's system. Referring to the statement of the Trainer Mr. Abdullah bin Huzaim, the PR submits that Mr. Abdullah bin Huzaim caused the Prohibited Substances to be administered without his knowledge, and that if he had had such knowledge, he would not have ridden the Horse.
17. The PR concludes that therefore, the burden of the PR to show how the Prohibited Substances entered the Horse's system as required by Article 10.5.1 and 10.5.2 EADMCR has been satisfied. The PR further expresses the opinion that, as the Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai, his status presents "Exceptional Circumstances" allowing for the reduction or elimination of the period of Ineligibility.
18. Mr. Abdullah bin Huzaim, by his statement, admitted that the respective Prohibited Substances had been administered, without the knowledge of the PR, before the two Events by the Veterinarian, under his direction. Mr. Abdullah bin Huzaim stated that he "believed that the horse required those medications" and that he believed that they would "both be outside FEI detection times". Further, that he had not administered the Prohibited Substances with the view to enhance performance during the two races and that he had not informed the PR of the administration of the Prohibited Substances.
19. Following the PR's submission, the FEI, on 24 April 2009, formally notified Mr. Abdullah Saeed bin Huzaim of the Positive Doping cases. By means of the Notification Letter of 24 April 2009, Mr. Abdullah bin Huzaim was informed that following the PR's explanations and his own statement dated 22 April 2009, he would be regarded as an Additional Person Responsible ("Additional PR") in the present case in accordance with Article 118, paragraph 3 GRs. The Notification Letter of 24 April 2009 included notice that

the Additional PR was provisionally suspended and granted the Additional Person Responsible the opportunity to be heard at a preliminary hearing before the FEI Tribunal.

20. The Additional PR declined to request a preliminary hearing.
21. The Additional PR, through his counsel Ms Rachel D.S. Hood, informed the FEI on 30 April 2009 that he had nothing further to add to his statement dated 22 April 2009 and that he was declining his right to a Hearing before the Tribunal.
22. The FEI Legal Department responded to the PR's submission with its own submission dated 15 May 2009. In its submission, the FEI justified the timeframe for administrative handling of the case file and demonstrated that the notification was provided after carrying out the initial review under Article 7.1.2 EADMCR and therefore 'promptly' according to Article 7.1.3 EADMCR. The FEI, supported by various CAS case decisions, further highlighted that the situation of athletes participating in further competitions before being notified of a first offence is very common. With respect to the Additional PR, the FEI highlighted that the primary responsibility would remain with the PR. With respect to the potential elimination or reduction of the sanctions in accordance with Article 10.5 EADMCR, the FEI submitted that the PR had not discharged the burden of proof required by Article 10.5.1 and/or 10.5.2 EADMCR. Further, that the sole act of presenting the Trainer of the Horse as the culpable party who had administered the Prohibited Substances did not amount to "Substantial Assistance" as contemplated by Article 10.5.3 of the EADMCRs.
23. Upon request by the FEI Legal Department as to the outcome of the PR's own investigations into the positive test results as had been promised initially, counsel for the PR informed the FEI Legal Department on 20 May 2009 that there was no new information to be provided. Further, she promised to "revert to the FEI in early course if the investigations have brought further matters to light". To date, no further information as to the outcome of the PR's investigations has been transmitted to the FEI.
24. The PR, on 28 May 2009, submitted his reply to the FEI's submission of 15 May 2009. In addition, on 30 June 2009, the PR submitted his responses to the FEI Questionnaire. With its submission dated 28 May 2009, the PR repeated the arguments as provided in his earlier submission. He clarified that he had no knowledge of his Trainer Mr. Abdullah bin Huzaim administering the Prohibited Substances or how, why and when they had been administered. With respect to his stables, the PR claimed on the one hand that his stables are first class stables, properly managed with all of the appropriate controls in effect. However, on the other hand that a dedicated and detailed enquiry into security management had been implemented following the positive sample

results to see whether stable management could be improved. The Tribunal notes that no evidence as to the quality of the stables or the corresponding stable management was provided and that no details as to the outcome of the PR's enquiries were submitted to the Tribunal. Nor were any proposed changes to stable management introduced.

25. By separate mail of 28 May 2009, counsel for the Additional PR informed the FEI that he did not wish to present his own submission and he would rely instead on the submission offered by the PR and his previously filed statement.

26. On 29 July 2009, the FEI submitted a Veterinary Statement by Dr. Kent Allen commenting on the medical history of the Horse. On 31 July 2009, the PR's counsel was offered the choice regarding whether to submit it and respond or to exclude it from the record evidence.

27. The PR's Counsel chose to exclude the Veterinary Statement from the record evidence in order to not delay a final decision in this matter.

28. The Tribunal is of the opinion that this additional Veterinary Statement does not bring any new evidence to light and does not raise any additional questions and is accordingly excluded from consideration.

#### **4.5 Jurisdiction**

29. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.6 The Person Responsible**

30. The PR is the Person Responsible for the Horse, in accordance with Article 118 GRs, as he was the rider of the Horse at the Event.

#### **4.7 The Additional Person Responsible**

31. Mr. Abdullah bin Huzaim is the Additional Person Responsible in accordance with Article 118 paragraph 3 GRs, as he was present at the Event and has made a relevant decision about the Horse.

#### **4.8 The Decision**

32. 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 LCH as well as of the HKJC are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Guanabenz and 16-b Hydroxy-Stanozolol (LCH) as well as Guanabenz (HKJC), which are Prohibited Substances, in the samples taken from the Horse at the Events. The PR did not contest the accuracy of the test results or the positive findings.

33. The FEI has thus sufficiently proven the objective elements of two offences in accordance with Article 3 EADMCR. The two Prohibited Substances found in the two samples are classified as "Doping" Prohibited Substances.
34. The present case deals with two rule violations, one of which involves two substances in combination. In accordance with EADMCR Article 10.6.1, the Tribunal has however treated the two violations as a single Doping Violation.
35. In Doping and Medication cases, there is strict liability as described in Article 2.1.1 EADMCR. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 EADMCR, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 EADMCR.
36. The Tribunal is of the opinion that the PR has not been prejudiced by the fact that it took some time for the FEI to gather all the necessary information in these cases, thereby making sure that the notifications were handled with respect for the PR's rights. Moreover, when considering all the circumstances in relation to the handling of the case, the notifications were prompt according to Article 7.1.3 EADMCR.
37. The PR has an obligation to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system, which was undoubtedly not what happened in the present case. No evidence was submitted indicating that the PR had given strict written or other instructions to the stable staff to ensure that no Prohibited Substances were administered to any horse that was likely to compete in international competitions.
38. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all substances administered to horses which are destined for participation in international events and to ensure that such horses do not have any Prohibited Substances in their systems.
39. Generally, therefore, the Tribunal is of the opinion that competitors are responsible for what their staff provides to the horses and whatever treatments it administers to them. However, the Tribunal

also recognizes that the application of this rule can be different when it comes to PRs with high social and governmental status. While the Tribunal would not expect the PR in this case to be personally working in the stables, the Tribunal does expect him to take a senior level of responsibility to enforce stable management that demonstrates respect for the applicable rules and horse welfare. Put more simply, as a person of high government status executes his governmental role from a position of authority and effective delegation, the same principle should apply to stable management. Further, the Tribunal would expect evidence of excellent stable management to be submitted in such cases so that the Tribunal can be comforted that the PR's stables are being properly and effectively supervised so as to ensure a high likelihood of compliance with FEI Rules. No such evidence was submitted in this case.

40. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible given that a Trainer was permitted to cause the administration of Prohibited Substances without his knowledge. As set forth above, the Tribunal understands that the Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai will have less time to follow up his responsibilities in this respect, but even so that does not render Articles 10.5.1 or 10.5.2 EADMCR applicable in this case. The strict responsibility of the PR is necessary in the fight against doping and to protect the principles of fair play and promotion of equal conditions in the conduct of international events, as well as with regard to horse welfare. Nevertheless the Tribunal appreciates the fact that the PR cooperated with the FEI and initiated an investigation which revealed that the Trainer had caused the administration of the Prohibited Substances to the Horse.
41. In deciding the sanctions, the FEI Tribunal considered, on the one hand, the doping violations and types of substances involved as well as the fact that the Prohibited Substances were deliberately administered to the Horse upon instruction by the Additional PR and, on the other hand, and in mitigation, the PR's "amateur status" and the fact that the PR has proactively informed the FEI of the positive test results.
42. According to Article 9 EADMCR, disqualification from the Events is automatic when there is a positive finding.
43. With respect to the Additional PR, the Tribunal is of the opinion that he deliberately administered the Prohibited Substances, qualified as Doping substances to the Horse and intended to enhance the Horse's performances. He has stated that even so he miscalculated the withdrawal time of the substances, he "clearly [...] wanted His Highness to do well with the Horse". This behaviour is not acceptable and needs to be sanctioned severely.

44. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.9 Disqualification**

45. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Events and all medals, points and prize money won at the Events must be forfeited, in accordance with Article 9 EADMCR.

#### **4.10 Sanctions**

46. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:

- 1) The PR shall be suspended for a period of **6 months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of Ineligibility imposed in this decision, starting from the day that the case was voluntarily reported, i.e 3 April 2009.
- 2) The additional PR shall be suspended for a period of **12 months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of Ineligibility imposed in this decision.
- 3) The PR is fined **CHF 3.000.-**.
- 4) The Additional PR is fined **CHF 4.000.-**.
- 5) The PR shall contribute **CHF 1.500.-** towards the legal costs of the judicial procedure.
- 6) The Additional PR shall contribute **CHF 1.500.-** towards the legal costs of the judicial procedure.

### **5. DECISION TO BE FORWARDED TO:**

**5.1 The persons sanctioned:** Yes

**5.2 The President of the NF of the persons sanctioned:** Yes

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

**5.4 Any other: No**

**FOR THE PANEL**



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**THE CHAIRMAN Mr Patrick A. Boelens**