



Arbitration CAS 2006/A/1132 Ismail Mohammed v. Fédération Equestre Internationale (FEI), award of 29 Novembre 2006

Panel: Prof. Martin Schimke (Germany), President; Mr Jean-Philippe Rochat (Switzerland); Prof. Denis Oswald (Switzerland)

Equestrian

Doping (guanabenz)

Nomination of the Person Responsible

Level of responsibility of the PR

No equality in illegality

Strict liability and presumption of guilt of the PR

Arbitrary sanction

- 1. The status and determination of the Person Responsible (PR) is governed exclusively by Art. 142 of the FEI General Regulations. The applicable FEI regulations do not provide for organisers to enquire who is the Person Responsible for a horse before a race takes place. As a consequence, the Person Responsible can be nominated several months after the race took place. The nominated Person Responsible could even happen to be somebody who is not under the Jurisdiction of the FEI applicable regulations. Art. 142 of the FEI General Regulations does not provide for specific rules or guidelines regarding the nomination process of the Person Responsible, if different than the rider of the horse. Under those circumstances, abuses are likely to happen, since almost anybody, from the groom to an inexperienced parent, could, in theory, be nominated as the Person Responsible. This clearly would not be in accordance with the purpose of Art. 142 of the FEI General Regulations.**
- 2. The FEI applicable regulations do not provide for a scale according to which the level of responsibility varies with the function exercised by the PR within a team. Once a PR is identified, he has exactly the same obligations and rights, whether he is the owner, the rider or any other appointed person. The simple fact that the PR is not the rider or the owner does not relieve him in any way from the duty of care imposed by the FEI applicable regulations, nor is the extent of his responsibility less important than the riders' or the owners', who have a direct and exclusive relationship with the horse.**
- 3. If, in a concrete case, a decision is taken in violation of the applicable regulations and the law respectively, it does not give the right to a person, who is in an identical situation, to be treated in the same manner and to obtain a similar illegal decision anyway. A PR can therefore not take advantage of the fact that, in allegedly similar cases, the FEI Judicial Committee has not suspended the PR despite of the clear text of Art. 174.6.2.1 of the FEI General Regulations.**

4. **In accordance with the principle of strict liability, the establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. In compliance with Art. 174.6.2.1 of the FEI General Regulations, the finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the horse. In the absence of any evidence whatsoever that would indicate manipulation by a third party or any explanation with regards to the presence of the forbidden substance in the horse's body, the PR must be considered as having deliberately attempted to affect the performance of the horse and committed a doping offence prohibited by the applicable FEI regulations.**
5. **By imposing a sanction much harsher than in any previous case with comparable objective elements, a national federation Judicial Committee renders an arbitrary decision, as the latter harms a feeling of justice and of fairness and because it lacks a plausible explanation of the connection between the facts found and the decision issued.**

Mr Ismail Mohammed ("the Appellant") has been involved as a trainer of endurance horse riding since 1993. He is the principal trainer for the Al Aasfa stables and holds a trainer's licence from the Emirates Racing Association.

Fédération Equestre Internationale (FEI or "the Respondent") is the international governing body for equestrian sports. It has its seat in Lausanne, Switzerland.

On 26 August 2005, the horse Orkara participated in the CH-EU-Open-4*E, a 160 km long endurance race which took place in Compiègne, France ("the Event").

Orkara was ridden by Sheikh Majid bin Mohd Al Maktoum, who finished third.

Just after the race, the horse Orkara was selected for a doping control. The samples were collected under the supervision of Mr Narbat Singh.

The FEI Medication Control Form gives the following indications:

- The samples were collected from the horse Orkara, FEI Passport No FRA 11441, and stored in sealed bags. The bags tags ID were 345074, 345075 and 345076.
- Mr Wahid Murad signed the form and the following declaration: *"I certify that I witnessed the collection and the sealing of the undermentioned samples"*.
- No remark was made on the FEI Medication Control Form as to the sample collection procedure.

The analysis of the sample collected from the horse Orkara was performed by the FEI approved central laboratory, the "Laboratoires des Courses Hippiques" in Paris, France (LCH).

On 26 September 2005, Dr Yves Bonnaire, Director of the LCH, issued a certificate of analysis regarding the sample of the horse Orkara. In his report, Dr Yves Bonnaire confirmed that:

- the sample was delivered to the laboratory on 31 August 2005;
- the seals of the security bag numbered 345074 and the sample bottle were unbroken and intact at the time the laboratory received the sample;
- the analysis of the sample was conducted under his supervision;
- the analysis was conducted properly and in accordance with internationally accepted practices;
- the sample contains guanabenz and hydroxy-guanabenz, a metabolite of guanabenz. Guanabenz is a prohibited substance, which is undisputed.

In a report dated 15 October 2005, the FEI's Medication Sub-Committee certified to the FEI Veterinary Department that the analysis conducted by the LCH had been performed correctly. According to this document, the grading of the detected substance is "1". Under the grading system of the FEI's Medication Sub-Committee, a substance is graded "1" if it has a relatively high potential to affect the performance of the horse and is graded "5" if it has a relatively low potential to affect the performance of the horse.

On 26 October 2005, a confirmatory analysis was requested.

On 20 November 2005, the Racing Laboratory of the Hong Kong Jockey Club (HKJC) issued a test report confirming the presence of guanabenz and its metabolite hydroxy-guanabenz in the sample stored in the security bag numbered 345075.

On 12 December 2005, the results of the confirmatory analysis performed by the HKJC were notified to Sheikh Majid bin Mohd Al Maktoum's legal counsel, Mr Jeremy Key.

Until January 2006, the FEI assumed that Sheikh Majid bin Mohd Al Maktoum was the Person Responsible for the horse Orkara at the Event:

In his letter dated 22 January 2006, Mr Jeremy Key submitted that he recently learned the fact that his client, Sheikh Majid bin Mohd Al Maktoum, was less than 18 years old at the time of the Event. Due to his age and in accordance with Art. 142.4 of the applicable FEI General Regulations, the rider could not be the Person Responsible for the horse. Mr Jeremy Key confirmed the following:

"We are instructed that the Person Responsible for the horse Orkara on 26th August 2005 is Mr. Ismail Mohammed, the trainer".

Since then, the Appellant was acknowledged as the Person Responsible for the horse Orkara at the Event which is undisputed between the parties.

On 28 June 2006, the Judicial Committee of the FEI passed a decision, which reads in relevant parts as follows:

(...)

14) Despite these denials and unverified assumptions, which are duly noted, the PR has not been able to explain the presence of the prohibited substance in Orkara's samples and therefore has not rebutted the presumption of a deliberate attempt to affect the performance of the horse under GR 174.6.2.1.

15) Considering the nature of the detected substance, which is designed to lower heart rate, and the nature of the competition in which the horse was participating (an endurance race in which heart rate is a determining factor in the ability to compete), and that the substance was graded "1" by the MSC of the FEI, the Judicial Committee is of the opinion that a suspension of one (1) year is appropriate and proportional.

(...)

As a consequence of the foregoing, the Judicial Committee decides as follows:

- 1) Disqualification of the horse Orkara and the Rider from the above Event and forfeiture of all prize money.*
- 2) The PR (Mr. Ismail Mohammed) is suspended from taking part in international events, including training horses at international events, for a period of one (1) year to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of this written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.*
- 3) The PR is fined CHF 5,000.-*
- 4) The PR shall contribute CHF 500.- towards the legal costs of the judicial procedure and CHF 750.- towards the costs for the confirmatory analysis".*

On 28 July 2006, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS).

On 17 August 2006, the Appellant filed an appeal brief.

On 11 September 2006, the Respondent filed an answer.

A hearing was held on 23 October 2006 at the CAS premises in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Art. 059 of the FEI Statutes, 21st edition, effective 21 April 2004, Art. 170.1.3 of the FEI General Regulations, 21st edition, effective 1 January 2005 and Art. R47 of the Code of Sport-related Arbitration (the "Code").

2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

Applicable law

4. The FEI Statutes, 21st edition, effective 21 April 2004 and the FEI General Regulations effective 1 January 2005 were amended respectively in May and June 2006.
5. Both the new and the old versions of the FEI Statutes, 21st edition, provide in their Art. 065 par. 3 that *“All modifications or amendments with reference to the Legal System shall apply to any case that arises after the enforcement dates of the new Statutes and General Regulations. Any case arising before those dates and still pending decision will be governed by the previous texts of the Statutes and General Regulations”*.
6. At the time of the Event at Compiègne and of the positive findings in anti-doping tests conducted on the horse Orkara, the FEI Statutes, 21st edition, effective 21 April 2004 (the “FEI Statutes”) and the FEI General Regulations effective 1 January 2005 (the “FEI General Regulations”) were in force and must therefore be applicable, which is undisputed.
7. Art. 059 par. 1 last sentences of the FEI Statutes provides as follows: *“The parties concerned shall comply with the Statutes and Regulations of the CAS, and accept and enforce its decision in good faith. The parties concerned acknowledge and agree that the seat of the Court of Arbitration is in Lausanne, Switzerland and that procedures before the Court of Arbitration are governed by Swiss Law”*.
8. Art. R58 of the Code specifies that the Panel *“shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled”*.
9. According to Art. 057 par. 1, first sentence of the FEI Statutes, *“The FEI is located in Switzerland, as an incorporated body under the Swiss Civil Code”*.
10. It follows that the FEI Regulations as defined here above and Swiss law are applicable to the present case.

Admissibility

11. The appeal was filed within the deadline provided by Art. 170.5.2 of the FEI General Regulations, that is within 30 days after notification of the decision issued by the FEI Judicial Committee.

12. It follows that the appeal is admissible.

Procedural motions – provisional measures

13. On 28 July 2006, the Appellant submitted an application for a stay of the execution of the appealed decision. On 7 August 2006, the Deputy President of the CAS Appeals Arbitration Division rejected the said application for provisional measures. In his order, the Deputy President of the CAS Appeals Arbitration Division reserved the costs.
14. On 17 August 2006, the Appellant filed an “*urgent procedural motion*”, which he withdrew at the hearing.

Merits

15. The main issues to be resolved by the Panel are:
- a) Has a doping offence been committed?
 - b) Who must assume the consequences of the doping offence and to what extent?
 - c) Did the Appellant rebut the assumption of a deliberate medication case?
 - d) Which sanction should apply?
- A. Has a doping offence been committed?*
16. It is undisputed that guanabenz and its metabolite hydroxy-guanabenz are prohibited substances.
17. The said substances were found in the urine samples collected on the horse Orkara. The accuracy of the testing methods or the test results and positive findings are not contested. The Appellant also does not try to allege the possible occurrence of a breach in the chain of custody.
18. Therefore, the result is a doping offence, prohibited by the applicable FEI regulations.
- B. Who must assume the consequences of the doping offence and to what extent?*
- a) In general
19. In the absence of counter evidence and any dispute on this issue it can be assumed that, pursuant to Art. 002 Para. 4 FEI Statutes, the Appellant as a holder of a trainer licence of the Emirates Racing Association was subject to the Statutes, Regulations and Rules of the FEI before and during the event.

20. At the hearing, the Respondent confirmed to the Panel that the status and determination of the Person Responsible is governed exclusively by Art. 142 of the FEI General Regulations, which reads as follows in relevant parts:

“1. The Person Responsible for a horse has legal responsibility for that horse, including responsibility under the GRs and the VRs and unless otherwise stated is liable under the Legal System (Chapter IX).

2. It is the obligation of the Person Responsible and of every other person subject to the Statutes, Regulations and Rules to know the Statutes, Regulations and relevant Rules, and lack of such knowledge does not relieve these persons from liabilities under the Statutes, Regulations and Rules.

3. The Person Responsible shall normally be the competitor who rides or drives the horse during an event or in Vaulting the lunge, but the owner may, be regarded as an additional Person Responsible if he is present at the event or has made a relevant decision about the horse.

4. If the competitor is under 18 years of age, the Person Responsible for his horse must be nominated by the NF or Chef d'Equipe and may be the owner, a parent of the competitor, the Chef d'Equipe, the team coach, the team veterinarian or some other responsible adult. If the NF and Chef d'Equipe fail to nominate the Person Responsible, any one or more of the owner, a parent of the competitor, the Chef d'Equipe, the team coach and the team veterinarian may be viewed as the Person Responsible.

(...)

7. The Person Responsible is responsible for any act performed in the stables to any horse under his jurisdiction, by himself or by any other person with access to the horse, and is responsible while riding, driving or exercising any horse under his jurisdiction. The Person Responsible is not relieved from such responsibility as a result of the lack or insufficiency of stable security.

8. If, for any reason, the Person Responsible is unable or is prevented from caring for the horses under his jurisdiction he must immediately notify the Secretary of the OC and the Veterinary Commission”.

21. The FEI also declared at the hearing that the applicable FEI regulations do not provide for organisers to enquire who is the Person Responsible for a horse before a race takes place.
22. As a consequence of the above, the Person Responsible can be nominated several months after the race took place, which is the case here. The nominated Person Responsible could even happen to be somebody who is not under the Jurisdiction of the FEI applicable regulations.
23. Such situations are certainly regrettable, since it is evident that the passage of time makes it more difficult for the nominated Person Responsible to collect the necessary facts, documentation or information relevant for the defence of his interests. Worse, it could prevent him from exercising his rights as implemented by the FEI Regulations, such as, for instance, the right to request the analysis of the B sample or to be present at the identification and opening of the B sample (see Art. 7.1.5 of the FEI Equine Anti-Doping and Medication Control Rules, effective 1 June 2006) or the right to notify the Secretary of the Organising Committee and the Veterinary Commission the fact that he is unable or is prevented from caring for the horses under his jurisdiction (Art. 142 par. 8 of the FEI General Regulations).

24. Furthermore, Art. 142 of the FEI General Regulations does not provide for specific rules or guidelines regarding the nomination process of the Person Responsible, if different than the rider of the horse. Under those circumstances, abuses are likely to happen, since almost anybody, from the groom to an inexperienced parent, could, in theory, be nominated as the Person Responsible. This clearly would not be in accordance with the purpose of Art. 142 of the FEI General Regulations.
 25. The Panel regrets the confusion that can be caused by the applicable FEI regulations and strongly recommends the FEI to provide for specific rules regarding the process of the designation of the Person Responsible, which must necessarily take place before the beginning of any event.
- b) In particular
26. The Appellant submits that the level of responsibility varies with the function exercised by the Person Responsible within a team. In particular, the Appellant insists on the fact that he is the Person Responsible for the horse Orkara only because its rider was a minor at the time of the Event. He is therefore of the opinion that the extent of his responsibility is less important than the riders' or the owners', who have a direct and exclusive relationship with the horse. As a trainer he had to manage and supervise a team of several horses, riders, grooms and technical staff whereas a rider - who is normally the Person Responsible - has to take care of himself and of one horse. According to the Appellant, his opinion is confirmed by the FEI jurisprudence, in which no suspension of the appointed Person Responsible has ever been pronounced by the FEI Judicial Committee.
 27. The FEI applicable regulations do not provide such a scale of responsibility. Once a Person Responsible is identified, he has exactly the same obligations and rights, whether he is the owner, the rider or any other appointed person. The simple fact that the Appellant is not the rider or the owner does not relieve him in any way from the duty of care imposed on the Person Responsible by the FEI applicable regulations.
 28. Regarding the alleged absence of suspension of an appointed Person Responsible in the FEI case law, the Appellant refers to the four following decisions of the FEI Judicial Committee:
 - Decision of the FEI Judicial Committee dated 27 July 2005: The horse Loughnatousa Bart was ridden by a minor, whose father declared himself as the Person Responsible. The latter was also the owner of the horse. The prohibited substance found in the sample was graded "1" under the Medication Sub-Committee grading system. The Person Responsible failed to rebut the presumption that the administration of the prohibited substance was a deliberate attempt to affect the performance of the horse. He only confirmed that he did not administer or have knowledge of anybody administering prohibited drugs to the horse. The FEI Judicial Committee stated "*Art. 174.7.2 GR 20th Edition offers a suspension period of the PR from 3 to 24 months. As the PR is not the rider himself but the father of a rider under 18 years, no suspension is imposed*". The horse and the rider were disqualified from the event. The Person Responsible was fined CHF 3'000 and was liable

to pay CHF 1'000 towards the costs of the judicial procedure and CHF 750 for the confirmatory analysis.

- Decision of the FEI Judicial Committee dated 15 September 2005: The horse Chopin was ridden by a minor, whose mother declared herself as the Person Responsible. The latter was also the owner of the horse. The prohibited substance found in the sample was graded "2" under the Medication Sub-Committee grading system. The Person Responsible failed to rebut the presumption that the administration of the prohibited substance was a deliberate attempt to affect the performance of the horse. She only confirmed that she did not administer or have knowledge of anybody administering prohibited drugs to the horse. The FEI Judicial Committee stated "*Since the PR is not a rider herself but the mother of a rider under 18 years, in view of the type of substance and its grade and the efforts made by the PR to explain the presence of the substance and efforts to ensure a reasonable level of stable management, the Judicial Committee decides not to impose a period of suspension*". The horse and the rider were disqualified from the event. The Person Responsible was fined CHF 2'500 and was liable to pay CHF 1'000 towards the costs of the judicial procedure and CHF 750 for the confirmatory analysis.
- Decision of the FEI Judicial Committee dated 8 September 2006: The horse Quinta was ridden by a minor, whose mother declared herself as the Person Responsible. The prohibited substance found in the sample was graded "2" under the Medication Sub-Committee grading system. The horse and the rider were disqualified from the event. No period of suspension was imposed on the Person Responsible, who was fined CHF 1'500 and was liable to pay CHF 750 towards the costs of the judicial procedure.

This case differs from the present matter in that the Person Responsible succeeded in proving that the findings were the result of a legitimate treatment of the horse according to Art. 174.6.2.2 of the FEI General Regulations. Consequently, the situation dealt with in the decision dated 8 September 2006 is not comparable with the one of the present case and is of no help with regard to the issues to be resolved by the Panel.

- Interim decision of the FEI Judicial Committee dated 14 September 2006. The horse Liski De Biesme was ridden by a minor and tested positive to a prohibited substance. The owner of the horse accepted to be considered as the Person Responsible.

In its interim decision, the FEI Judicial Committee essentially dealt with the practical consequences for the rider resulting from his disqualification from the race due to the adverse analytical findings. To date, the final decision of the FEI Judicial Committee has not been issued and the question of the sanction of the Person Responsible is still open. The facts that the rider was a minor and that a Person Responsible was nominated are the only common points between the present case and the interim decision. The situation in connexion with the horse Liski De Biesme is clearly not comparable with the present matter and therefore is of no help. No further consideration is needed.

29. Regarding the decisions of the FEI Judicial Committee related to the horses Loughnatousa Bart and Chopin, the Respondent considers that, in view of the parents' inexperience, the automatic disqualification of their children and the forfeiture of all prizes were sufficient sanctions. Inexperienced parents and experienced trainers should not be treated on an equal footing.

30. The CAS has full power to review both the facts and the law of the case. The Panel may even request the production of further evidence. There is no binding authority of precedent (CAS 96/149, CAS Digest I, 251, 258-259). This said, the CAS Panel observes that the above decisions of the FEI Judicial Committee do not specify how experienced the parents of the minors were. In particular, there is no indication that the said parents were not registered members of a National Federation.
31. Furthermore, and according to Art. 174.6.2.1 of the FEI General Regulations, the Person Responsible is liable to suspension for a minimum of three months in case of a deliberate attempt to affect the performance of the horse. In its above mentioned decisions, the FEI Judicial Committee chose not to suspend the Persons Responsible. By doing so, it decided to impose a lesser sanction than the minimum penalty prescribed by the FEI General Regulations. Formally, the FEI Judicial Committee did not explain on what legal or regulatory ground it departed from the applicable rules, by not imposing a sanction expressly provided by the FEI General Regulations. In so far, the said decisions might not even comply with the applicable regulations of the FEI.
32. An acceptable explanation for the absence of suspension of the Persons Responsible in the above decisions of FEI Judicial Committee, could be found in the fact that the parents were not registered members of a National Federation. If such were indeed the case, the Panel does not see how the FEI Judicial Committee could have imposed a suspension on them. What could the parents be possibly be suspended from? What would be the effect of a suspension on such Persons Responsible? Could such unregistered parents be actually sanctioned under the FEI applicable regulations? The Panel can leave those questions open as they are irrelevant for the present matter. Nevertheless, the FEI should consider revising its General Regulations on these unresolved questions.
33. In any event, due to the illustrated aspects, in particular the lack of detailed knowledge of the facts of the case and the legal and regulatory grounds, under no circumstances the decisions of the FEI Judicial Committee regarding the horses “Bart” and “Chopin” can be compared with the present case. If, in a concrete case, a decision is taken in violation of the applicable regulations and the law respectively, it does not give the right to a person, who is in an identical situation, to be treated in the same manner and to obtain a similar illegal decision anyway (ATF 117 Ib 266 c. 3f, p. 270; 117 Ib 414 c. 8c p. 425).
34. The Appellant can therefore not take advantage of the fact that, in allegedly similar cases, the FEI Judicial Committee has not suspended the Person Responsible despite of the clear text of Art. 174.6.2.1 of the FEI General Regulations.
35. In the view of the above, the mentioned case law of the FEI Judicial Committee, submitted by the appellant, is irrelevant for the present matter and does not relief him from taking the full responsibility for Orkara’s positive findings.

- C. *Did the Appellant rebut the assumption of a deliberate medication case?*
36. The Appellant submits that it is impossible for him to demonstrate that he has nothing to do with the doping of a specific horse of his team and suggests that he is the victim of a conspiracy. According to him, *“The total absence of interest in the doping of Orkara and the indirect relationship of the Appellant with this horse shall be considered as being sufficient to rebut the presumption of the deliberate attempt of doping of the Person Responsible”*.
37. Art. 174 of the FEI General Regulations provides namely the following:
“6.2.1. The finding on analysis of a Prohibited Substance as defined in Art. 146 is presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse and will entail the suspension of the Person Responsible from 3 to 24 months. A fine of CHF 1,000.- to 15,000.- can also be imposed;
6.2.2. If the Person Responsible can prove that it was not a deliberate attempt to affect the performance of the horse or that the findings are the results of legitimate treatment of the horse or of one or more parts of his body, the sanction may entail a fine up to CHF 15,000.- but a suspension from 1 to 3 months may also be imposed”.
38. The FEI has the initial burden of proving the presence of a prohibited substance in any of the tissues of the horse, its body fluids or excreta. It has been held that the objective elements of the offence of doping *“must be established to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made”* (CAS OG 96/003 & 004; CAS 98/208; CAS 99/A/234 & 235.)
39. In the present case, the FEI Judicial Committee stated that it *“is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of the Laboratoire des Courses Hippiques and the Racing Laboratory of the The Hong Kong Jockey Club are accurate. The Judicial Committee is satisfied that the test results evidence the presence of the prohibited substances, guanabenz and hydroxy-guanabenz. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence”*.
40. Under those circumstances, the Panel accepts that the FEI met its initial burden of proof, which is then shifted to the Person Responsible.
41. In accordance with the principle of strict liability, the establishment of the objective elements of a doping offence creates the presumption of guilt of the Person Responsible. In compliance with Art. 174.6.2.1 of the FEI General Regulations, the finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse.
42. The CAS has constantly applied the principle of strict liability where justified by the terms of the doping control rules at issue. Moreover, the Swiss Federal Court has specially held that doping control rules which provide for strict liability are valid under the law of Switzerland (REEB M. (ed.), Digest of CAS Awards III, 2001-2003, p. 132 ff).
43. It is undisputed that the positive findings are not the result of legitimate treatment of the horse.

44. The Appellant suggests that he is the victim of a conspiracy. Such a statement should not be made absent a basis in fact. *In casu*, the Appellant did not mention the eventual motive or possible author of such alleged conspiracy. The Appellant adduced no evidence to ascertain a plausible plot hatched against him. This allegation must be dismissed.
45. The Appellant also puts forwards the fact that he had no interest in the doping of Orkara. This is a matter of subjective impressions. The Appellant's position is not substantiated by anything concrete which could allow the Panel to dismiss without further consideration the contention made by the Respondent's opposite opinion. As a matter of fact, the FEI alleges that "*At this level of competition, any trainer in charge of elite horses focuses on the performance of every single horse under his supervision. (...) The ultimate goal of the competition for riders, trainers, owners and even for national federation is to win races or, at least, to get medals. (...) For a trainer any medal obtained by one of his horse in an international event has a financial impact in terms of publicity, reputation, media coverage and direct as well as indirect repercussions. (...) a team trainer has therefore a direct and obvious interest in enhancing the performance of one of his horses (if not all)*".
46. The Appellant does also not meet his burden of proof, when he alleges that the rider or the owner have a direct and exclusive relationship with the horse, which is not the case of a trainer. In the present case, this argument is clearly unfounded and must be dismissed since Sheikh Majid bin Mohd Al Maktoum declared that he had seen the horse for the first time one day before the Event. In contrast, the Appellant admitted he had a good knowledge of Orkara's history and had been following the horse since the 6 August 2005, that is 20 days before the race.
47. The Panel finds no reasons to depart from the position expressed in CAS 92/86 (Digest of CAS Awards I 1986-1998, p 164):
"the CAS was obliged to note that, apart from the various allegations summarized above, the appellant was not able to offer the slightest evidence that there was not a deliberate attempt to affect the performance of the horse. Nor did he seek to direct the hearing towards the question of possible legitimate treatment which might have been administered to the horse. Indeed, the appellant was content to allege that he was in good faith and that neither he nor the owners of the horse would have had any interest in administering a prohibited substance to the horse. (...) Purely and simply to admit such (moreover unproven) allegations would amount to emptying articles 177.5.2 and 177.5.3 of their substance, which would result in making any fight against doping futile".
48. For all the foregoing-mentioned reasons, considering the Appellant's failure to cite any evidence whatsoever that would indicate manipulation by a third party or to give any explanation with regards to the presence of guanabenz in Orkara's body, the Panel considers that the Appellant's allegations do not suffice to reverse the presumption implemented by Art. 174.6.2.1 of the FEI General Regulations. On these findings of the evidence, it has been proven by the Respondent as well as by the circumstances that the Appellant must be considered as having deliberately attempted to affect the performance of the horse and committed a doping offence prohibited by the applicable FEI regulations.

D. *Which sanction should apply?*

a) In general

49. The FEI Judicial Committee's competence to impose a sanction derives from Art. 058 Paras. 6 and 8 FEI Statutes.

50. According to Art. 146 par. 2 of the FEI General Regulations, *"any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event as the result of a Medication Test, is automatically disqualified, together with the competitor with that horse, from all competitions at that event and the classification adjusted accordingly, unless the Ground Jury has authorised the horse to participate or continue in the event or unless the Judicial Committee decides based on the evidence provided to terminate the proceedings of the case"*.

51. Pursuant to Art. 166 of the FEI General regulations *"1. The CAS has the power to impose the same scale of penalties as the Judicial Committee. 2. The CAS may impose more severe penalties than those imposed in the first instance, provided they are within the limits of the penalty jurisdiction of the body from which the appeal to the CAS is brought"*.

52. The said penalties are more particularly governed by Art. 174 of the FEI General Regulations, which provides namely the following:

"6.1. The finding on analysis of a Prohibited Substance as defined in Art. 145 (Medication Control, Anti-doping and Protection of Competitors) will entail the disqualification of the competitor from the event and the forfeiture of any prize money won by that competitor in that same event and may entail a suspension of one month to life and/ or a fine of CHF 1,000.- to CHF 15,000.-."

6.2. The finding on analysis of a Prohibited Substance as defined in Art. 146 (Medication Control and Protection of Horses) will entail the disqualification of the horse from the event and the forfeiture of any prize money won by that competitor on that horse in the same event. The competitor will be disqualified on that horse and may be disqualified altogether;

6.2.1. The finding on analysis of a Prohibited Substance as defined in Art. 146 is presumed to be a deliberate attempt of the Person Responsible to affect the performance of the horse and will entail the suspension of the Person Responsible from 3 to 24 months. A fine of CHF 1,000.- to 15,000.- can also be imposed; (...)".

b) In particular

53. In the appealed decision of 28 June 2006, the FEI Judicial Committee justified the sanction imposed upon the Appellant as follows:

"15) Considering the nature of the detected substance, which is designed to lower heart rate, and the nature of the competition in which the horse was participating (an endurance race in which heart rate is a determining factor in the ability to compete), and that the substance was graded "1" by the MSC of the FEI, the Judicial Committee is of the opinion that a suspension of one (1) year is appropriate and proportional".

54. The Appellant considers as a mitigating factor in the assessment of the sanction the fact that (i) he was a nominated Person Responsible, (ii) he did not have a direct and exclusive relationship with the horse contrary to a rider or an owner, (iii) as a trainer he had no interest in the doping of one specific horse and (iv) had to manage and supervise a team of several horses, riders, grooms and technical staff whereas a rider - who is normally the Person Responsible - has to take care of himself and of one horse.
55. The Respondent sees as an aggravating circumstance the fact that the Appellant is an experienced trainer. Furthermore, *“In contrast with an athlete’s career, which is relatively short, a trainer’s career may last a lifetime. To have a dissuasive effect, suspensions imposed on trainers obviously need to be longer than suspensions imposed on riders”*.
56. As already exposed, the FEI regulations do not provide different levels of responsibilities, which might vary depending on the function exercised by the Person Responsible within a team. Once a Person Responsible is identified, he has exactly the same obligations and rights, whether he is the owner, the rider or any other appointed person.
57. In such a situation, it would be inconsistent with the rules in force to adjust the sanction according to the individual’s characteristics of the Person Responsible. The disciplinary bodies may evaluate any aggravating and/or extenuating circumstances on the basis of objective, rather than personal, criteria. Likewise, in its appealed decision of 28 June 2006, the FEI Judicial Committee imposed upon the Appellant a suspension of one year based on (i) the nature of the detected substance, (ii) the nature of the competition in which the horse was participating and (iii) the fact that the substance was graded “1”. The Appellant’s personality or social and professional condition was not taken into account. Moreover, the FEI Judicial Committee stated the following:
- “16) The Judicial Committee feels obliged to again emphasise in the clearest terms some key principles of the FEI as detailed in Article 001 of the Statutes, including:*
- *“(…) the observance of the principles and spirit of equestrian sports”,*
 - *“equal and fair conditions in the conduct of international events”,*
 - *and lastly and most importantly “preserving and protecting the welfare of the horse”.*
- Riders, trainers, owners and other support personnel have a strict obligation to ensure absolute observance of these basic requirements”*.
58. In view of the above and in similar situations, there is no reason to treat and sanction differently the Appellant from any other Person Responsible, namely a rider.
59. The Panel has reviewed all the decisions of the FEI Judicial Committee published on the Respondent’s Web site. In somewhat similar cases - which involved prohibited substance graded “1”, no rebuttal of the presumption of a deliberate attempt to affect the performance of the horse - the sanctions are in the range of 3 months suspension to a maximum of 8 months.

60. By suspending the Appellant for a period of one year, the FEI Judicial Committee imposed a much harsher sanction than in any previous case with comparable objective elements.
61. The Panel considers the appealed decision of the FEI Judicial Committee as arbitrary, because it harms a feeling of justice and of fairness and because it lacks a plausible explanation of the connection between the facts found and the decision issued. In particular, the FEI Judicial Committee departed from its constant practise, without any further explanation or specific justification as to why it imposed a suspension of 12 months, that is 4 months longer than the most severe sanction ever imposed in identical situations. The decision is therefore arbitrary in itself and so is its result. Consequently, it must be overruled (ATF 125 I 166 consid. 2a p. 168; 125 II 10 consid. 3a p. 15, 129 consid. 5b p. 134; 124 V 137 consid. 2b p. 139; 124 IV 86 consid. 2a p. 88).
62. Taking into account namely (i) the nature of the detected substance, (ii) the nature of the competition in which the horse was participating, (iii) the fact that the substance was graded "1" and was likely to affect the performance of the horse, which crossed the finishing line in third position and (iv) therefore, caused an irremediable damage to the Event in particular and to the image of equestrian sports in general, (v) the absence of plausible explanations with regard to the presence of the prohibited substance in the urines of the horse, (vi) the nature of the suspension which is limited to international events, the Panel considers that it is appropriate and proportional to reduce the period of suspension imposed upon the Appellant by the FEI Judicial Committee to 8 months.
63. Based on Art. 173 par. 4 of the FEI General Regulations and considering that it is undisputed that the Appellant has not taken part in international events and has not trained horses at international events since the notification of the decision of the FEI Judicial Committee dated 28 June 2006, the said 8 months suspension is to be imposed on Mr Ismail Mohammed starting on 29 July 2006.
64. In accordance with Art. 146 and Art. 174 of the FEI General Regulations, Sheikh Majid bin Mohd Al Maktoum and the horse Orkara must be disqualified from the Event held at Compiègne on 26 August 2005.
65. The fine as imposed by the FEI Judicial Committee in its appealed decision of 28 June 2006 can be confirmed.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Ismail Mohammed against the decision issued on 28 June 2006 by the FEI Judicial Committee is partially upheld.
2. The appealed decision issued on 28 June 2006 by the FEI Judicial Committee is set aside.

3. Sheikh Majid bin Mohd Al Maktoum and the horse Orkara are disqualified from the Event held at Compiègne on 26 August 2005 and, if necessary, the official ranking must be rectified consequently by the Fédération Equestre Internationale. Sheikh Majid bin Mohd Al Maktoum's medal, his points and prizes are forfeited.
4. Mr Ismail Mohammed is suspended from taking part in international events, including training horses at international events, for a period of eight (8) months to commence on 29 July 2006.

(...)