Arbitration CAS 2014/A/3738 Mark Kenzig v. Equestrian Australia Limited (EA), award of 5 March 2015

Panel: Mr Malcolm Holmes QC (Australia), President; Mr David Grace QC (Australia); Mr Alan Sullivan QC (Australia)

Equestrian
Doping (reserpine)
Fine and sanction

In circumstances where there is no evidence that the Person Responsible (PR) personally was party to any deliberate doping of the horse, there is already a significant sanction in the form of a two year period of ineligibility, the PR has limited financial means and a past contribution to the sport, fairness does dictate otherwise than imposing a fine.

I. PARTIAL AWARD

1. In this matter, the Panel, by a partial award made on 9 January 2015, dismissed the Appellant's appeal against a decision of the Equestrian Australia Tribunal made on 20 August 2014 that he had committed an anti-doping rule violation.

2. The Panel when making the partial award, reserved *"jurisdiction to deal with all questions relating to sanctions and to costs"*. Both parties have subsequently presented written submissions and material in accordance with the directions made by the Panel. The Panel has now determined the remaining issues on the papers.

3. The Appellant, as the Person Responsible, is subject to the possible imposition of the following sanction under Article 10.2 of the Equine Anti-Doping and Controlled Medication Regulations:

   "Two (2) years ineligibility. A Fine of $15,000 unless fairness dictates otherwise, and appropriate legal costs".

II. SUBMISSIONS OF THE PARTIES

4. The Appellant accepted that he is subject to the imposition of a mandatory two year period of suspension but submitted that, given his circumstances and given that the inherent nature of such a sanction is of such significance for him, fairness dictates that an additional sanction of a fine of $15,000 is not appropriate. This is his first offence under the Equine Anti-Doping and Controlled Medication Regulations or under any other regulations. He provided details

of his circumstances including the effect of the sanction on the operation of his horse training business and his lack of formal qualifications or training in any other line of work. He drew attention to the amount of voluntary work and contribution that he has made to the sport in the past.

5. The Respondent emphasised that the *"prima facie position"* includes a $15,000 fine. In summary, the Respondent submitted that those with long experience in the industry and whose livelihood depends upon participation in it *"should know better"*. It was submitted that those *"who have the most to gain from doping ought more readily attract the additional sanction of a fine"*. The Respondent submitted that the Appellant's *"contribution to the sport … is irrelevant"*. The Panel does not agree. The role of the volunteer and a past contribution to a sport cannot be ignored. It is a relevant consideration when considering whether fairness dictates that a fine of $15,000 is not an appropriate sanction.

A. Sanction

6. In circumstances where there is no evidence that the Appellant personally was party to any deliberate doping of the Horse where there is already a significant sanction in the form of a two year period of ineligibility, and the Appellant's limited financial means and his past contribution to the sport, this Panel considers that fairness does dictate otherwise than imposing a fine.

7. Accordingly, the panel determines that the sanction for breach by the Appellant of the EAD Rule should be solely the imposition of a two year period of ineligibility commencing on 20 May 2014.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appellant is to be subject to a period of Ineligibility (as defined in the Regulations) for a period of two years ending at midnight on 19 May 2016.

2. (…).

3. (…).