



**Arbitration CAS 2011/A/2558 Omran Ahmed Al Owais v. Fédération Equestre Internationale (FEI), award of 5 April 2012**

Panel: Prof. Peter Grilc (Slovenia), President; Mr András Gurovits (Switzerland); Mr Lars Halgreen (Denmark)

*Equestrian (jumping)*

*Doping (reserpine)*

*Basic conditions for an elimination or reduction of the sanction*

*Criteria for a finding of no fault or negligence*

*Criteria for a reduction of the sanction under no significant fault or negligence*

1. In order to avoid the ineligibility sanction or to achieve a reduction of such sanction, the Person Responsible (PR) must establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered a banned substance, or, respectively, he must establish that in view of the totality of the circumstances the degree of his negligence was so slight that a finding of “No Significant Fault or Negligence” is inevitable. To this end, he must first establish how the banned substance entered the horse’s system to the panel’s satisfaction.
2. Lack of intent is not the relevant criteria for a finding of No Fault or Negligence. Non-existence of fault or negligence must be proved by the PR to benefit from Article 10.5.1 Equine Anti-Doping rules (EADR). By administering a tranquilizer to a horse without making certain that it does not contain a banned substance, a PR acts negligently. Further, a PR has the duty to check the product description and to follow the explicit warning concerning its use before using it on the horse. Athletes are themselves solely responsible for, *inter alia*, the medication they take and even a medical prescription from a doctor (or a veterinarian’s advice) is no valid excuse for the athlete in a doping case. Therefore, an elimination of the sanction based on the “No Fault or Negligence” is excluded.
3. Pursuant to Art. 10.5.2 EADR, a PR can benefit from a reduction of the sanction based on the no significant fault or negligence rule if viewed in the totality of the circumstances he proves that he exercised “utmost caution” and that the circumstances are truly exceptional. In this respect, neither the element of trust nor the fact to act *bona fide* may be accepted as a special circumstance permitting a reduction of the sanction. Likewise, the fact for a PR to send a letter to the Director General of the Event revealing that he had administered a particular product and asking for advice on whether the administration of the product affected his ability to compete do not and could not serve as a means substituting for the relevant FEI forms and procedures. Moreover, accepting a lower educational level in a particular country cannot be qualified as a special

**circumstance allowing a reduction of the sanction particularly where the PR is a long term experienced competitor who is expected to be familiar with the basic and fundamental rules and regulations regarding doping.**

Mr Omran Ahmed Al Owais (the “Appellant”) is an experienced show jumping rider from the United Arab Emirates (“UAE”) and registered with the Emirates Equestrian Federation. He started his career in 1988 and participates at national and international shows in the UAE and in Europe. He operates his own stables. Oxillilia Joelle is a show jumping horse owned and ridden by the Appellant (the “Horse”).

The Fédération Equestre Internationale (“FEI”; “Respondent”) is the international federation that governs the equestrian sport, including show jumping, throughout the world. The FEI is established and organised in accordance with Articles 60 et seq. of the Swiss Civil Code and has its seat in Lausanne, Switzerland. It is recognised by the IOC.

The facts relevant to this case were undisputed and are set out below.

### **Participation in international show jumping competition in Abu Dhabi (UAE)**

On 13 to 15 January 2011, the horse ridden by the Appellant, participated in an international show jumping competition in the UAE, categorised as CSI4\*-W competition, i.e. international show jumping event approved by the FEI, and organised by the Abu Dhabi Equestrian Club (“Event”).

On 12 January, the Appellant intended to transport the horse to the event location, but due to difficulties loading it into the lorry, administered medicine, named Rakelin, to the Horse in order to calm it. Immediately after the arrival at the event location, the Appellant handed over a letter to Mr Adnan Sultan Saif al Nuamini, Director General of the Abu Dhabi Equestrian Club that organized the Event (“Event Organizer”), revealing the fact that he had administered Rakelin and asked for advice on whether the administration of Rakelin affected his ability to compete. The Director General of the Event Organizer informed the Appellant that the Horse would be permitted to compete, if both the name of the Appellant and the Horse appeared on the entry list. On 13 January 2011, both names appeared on the list.

On 13 January 2011, the Horse was selected for blood sample testing and the sample was analysed at the FEI approved laboratory, Hong Kong Jockey Club, Racing laboratory, Hong Kong, China. The laboratory received the sample on 18 January, it was analysed on 25 January and the Test Report was issued on 28 January. The analysis of the blood sample revealed the presence of Reserpine. Reserpine is on the 2011 FEI Equine Prohibited Substance List (No 869 Reserpine; its activity characterized as Tranquilliser). Reserpine is a substance contained in Rakelin.

### **Adverse Analytical Finding**

On 21 February 2011, the Emirates Equestrian Federation (the “EEF”) was notified by the FEI Legal Department about the Adverse Analytical Finding in the Horse’s blood sample and forwarded the letter including information about the Appellant’s provisional suspension, which became immediately effective, to the Appellant. The Appellant was informed by letter that he had the right to ask for a preliminary hearing and a B Sample analysis.

On 22 February 2011, the Appellant submitted a statement to the FEI explaining that he administered Rakelin to the Horse and explained the reason for doing so.

### **Preliminary hearing**

On 23 February 2011, a preliminary hearing, held via telephone in the presence of Prof. Dr. Jens Adolphsen as a member of the FEI Tribunal, Ms Carolin Fischer as a member of the FEI Legal Department and the Appellant (who was not represented by counsel), took place before the so-called Preliminary Panel of the FEI Tribunal. Following this preliminary hearing, the provisional suspension was maintained by such Preliminary Panel.

The Appellant waived his right to request a B Sample analysis because he admitted the administration of Rakelin to the Horse and because he had no reasons to mistrust the correctness of the sample analysis.

On 24 February 2011, the Appellant forwarded a written statement by the Event Organizer, signed by the Event Organizer’s Director General Mr Al Nuamini, to the FEI, confirming the receipt of the Appellant’s declaration letter of 12 January 2011.

On 24 January 2011, the Appellant sent a mail to Prof. Dr. Adolphsen and Ms Fischer with the declaration letter from the Abu Dhabi Equestrian confirming that they received a medicine declaration submitted before the competition and a copy of the declaration confirming the receipt of the Appellant’s declaration letter of 12 January 2011.

On 3 May 2011, the Appellant informed the FEI about his plan for his summer competition tour and asked for advice whether he could do so despite the pending proceedings. The FEI considered this notification as a request for a second hearing and lifting of the provisional suspension.

On 13 May 2011, the FEI forwarded a response to the Appellants’ letter and request for the lifting of the provisional suspension, respectively, to the FEI Tribunal and requested the dismissal of the Appellant’s application as well as maintaining the provisional suspension.

### **Preliminary Hearing Panel of the FEI Tribunal Decision**

On 24 May 2011, the Preliminary Panel of the FEI Tribunal rendered its decision denying that the requirements for a second preliminary hearing had been met and determined that the provisional suspension imposed on the Appellant was to be upheld.

### **FEI Tribunal Decision**

On 4 August 2011, the FEI Tribunal rendered its decision (“Decision”; Positive Anti-Doping case No.: 2011/BS04). Following this Decision, the Appellant (referred to as “Person Responsible” in the Decision) was suspended for a period of two years to be effective immediately from the date of notification. The period of provisional suspension, effective from 21 February 2011 to 4 August 2011, was credited against the Period of Ineligibility imposed in the Decision. The Appellant was ineligible to participate in FEI activities through 20 February 2013, he was fined CHF 1000 and ordered to contribute legal costs in the amount of CHF 1000. The Decision from 4 August 2011 is the subject of appeal in this CAS arbitration.

### **Proceedings before the Court of Arbitration for Sport**

The Appellant filed his statement of appeal (“Statement of Appeal”) on 2 September 2011.

On 13 September 2011, the Appellant filed his appeal brief (“Appeal Brief”; Statement of Appeal and Appeal Brief together “Appeal”) and the statement that he intended to call witnesses and/or expert witnesses.

On 5 October 2011, the CAS Court Office informed the parties that the Panel for the present dispute was constituted as follows: Dr. Peter Grilc as President and Dr. András Gurovits and Mr. Lars Halgreen as arbitrators chosen by the parties.

On 10 October 2011, the Respondent filed the answer (the “Answer”) to the Appeal including the expert statement by Dr Andrew Higgins (BVetMed MSc PhD FSB MRCVS) and the statement that it intended to call witnesses and/or expert witnesses.

On 11 October 2011, the CAS Court office invited the parties to inform the office whether they preferred a hearing to be held or whether the Panel should issue an award based on the parties’ written submissions.

On 18 October 2011, the Appellant informed the CAS Court office that he insisted on an oral hearing, while the Respondent did not request it since the requirements of Article R57 of the Code were met, however the Respondent did not object to a hearing being held, should the Panel consider such hearing to be necessary.

On 22 December 2011, the Panel issued an Order for Procedure setting out, among other things, the composition and the seat of the Panel, the language of the arbitration, and the law applicable to the merits of the dispute. The Order for Procedure was signed on behalf of both the Appellant and the Respondent respectively on 23 December 2011 and 4 January 2012.

The Panel heard oral opening statements by counsel for the parties and evidence from the following (expert) witnesses: Mr Mohamad Abdullah, Mr Adnan Sultan Saif Al Nuamini (by conference call), Mr Adel Khmes (by conference call), Dr Matthias Krebs, the Appellant (as a party), Dr Andrew Higgins, Dr Andrew Dalglish and Mr Ian Williams. The Appellant's witness, Mr Hussain Mohamad Atrees, could not be reached over the telephone. The witnesses, the experts and the Appellant were questioned firstly, by the party, who called them, then by the opposing party, then cross-examined and finally questioned by the Panel.

Before the end of the hearing the Panel heard the parties' oral closing statements. In his presentation, the Appellant insisted his requests be accepted, while the Respondent insisted on dismissal of the Appeal in its entirety.

At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings nor to the formation of the Panel. Following these final statements, the President of the Panel declared the hearing closed.

With a post-hearing letter the Panel asked the Parties for submissions to clarify their position whether they consider Reserpine prohibited at all times or not, i.e. whether there would be a legal distinction between an in- and out-of-competition use. The Appellant answered in a letter dated 14 February 2012, while the Respondent did the same in a letter dated 9 February 2012.

## **LAW**

### **Jurisdiction**

1. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS is based on Article 12.2.1 of the FEI Rules that states that the decision may be appealed exclusively to CAS in accordance with the provisions applicable before CAS. The jurisdiction of CAS, in fact, is not disputed by the parties and has been confirmed by the signing of the Order of Procedure.

### **Appeal proceedings**

2. As these proceedings involve an appeal against a decision regarding an international level athlete in a disciplinary matter brought by FEI, being an international federation on the basis of rules

providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the CAS Code.

### Scope of the Panel's review

3. According to the Rule R57 of the CAS Code ... the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

### Admissibility

4. The statement of appeal was filed within the deadline set in FEI rules and the Appeal Brief was filed within the prescribed deadlines. No objections have been made against the admissibility of the appeal by the Respondent.

### Merits

#### A. *The doping offence on 13 January 2011*

5. Article 143.1 of the FEI General Regulations (GR) states that ... "*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)*".
6. Article 2.1.1 of the EADR states that ... "*It is each Person Responsible 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 - 2.7 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*".
7. In the present case, the Appellant acknowledged the presence of the Banned Substance, Reserpine, in the blood sample of his Horse taken just after he had participated in the Event on 13 January 2011. Reserpine is a behavioural modifier used as a long lasting tranquilliser and categorised by the FEI as a Banned Substance. The Appellant confirmed that he obtained no ETUE for this substance prior to the Event.
8. The Appellant, furthermore, admitted that he administered Rakelin before the Event and since Rakelin contains the prohibited Banned Substance Reserpine and the Appellant did not challenge the positive finding, the doping offence is therefore established.

- B. *Basic Conditions for an Elimination or Reduction of the Sanction Based on “No Fault or Negligence” or “No Significant Fault or Negligence”*
9. Article 10.2 of the EADR provides that *“Sanction imposed for a violation of Article 2.1 (presence of a Banned Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Banned Substance or a Banned Method) or Article 2.5 (Possession of a Banned Substance or a Banned Method) shall be as follows unless the conditions for eliminating, reducing, or increasing the Sanction provided in 10.4, 10.5, or 10.6 are met. First Violation: Two (2) years Ineligibility; A Fine of CHF 15,000 unless fairness dictates otherwise, and appropriate legal costs”*.
10. No Fault or Negligence is defined as: *“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”* (APPENDIX 1 to the EADR, – DEFINITIONS).
11. No Significant Fault or Negligence is defined as: *“The Person Responsible and/ or member of the Support Personnel establishing that his or her 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)”* (APPENDIX 1 to the EADR, – DEFINITIONS).
12. These provisions must, however, be read in conjunction with Article 2.2 (Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method):
- “2.2.1 It is each Person Responsible’s personal duty, along with members of their Support Personnel, to ensure that no Controlled Medication Substance enters into the Horse’s body In-Competition without an ETUE. 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 a Rule violation for Use of a Controlled Medication Substance or a Controlled Medication Method.*
- 2.2.2 The success or failure of the Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method is not material. It is sufficient that the Controlled Medication Substance or Controlled Medication Method was used or attempted to be used for an ECM Rule violation to be committed”*.
13. In order to avoid the ineligibility sanction or to achieve a reduction of such sanction, the Appellant must establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered the Banned Substance Reserpine, or, respectively, he must establish that in view of the totality of the circumstances the degree of his negligence was so slight that a finding of “No Significant Fault or Negligence” is inevitable (CAS 2006/A/1025) . To this end, he must first establish how the Banned Substance entered the Horse’s system.

C. *How the Banned Substance entered the Horse's system*

14. As already stated in 0, the Appellant admitted that he administered Rakelin containing Reserpine himself as (i) it derives from rec. 6 of the Decision, (ii) rec. 11-13 of the Appeal Brief, (iii) the Appellant's letter from 22 February 2011, and confirmed by (iv) the Appellant's testimony at the hearing in the present case.
15. On the basis of the above facts, the Panel concurs with the FEI Tribunal that the source of the contamination was indeed the injected dose of Rakelin, which entered into the Horse's system through the administration by the Appellant himself. Accordingly, the Panel holds, that the Appellant has proved to its satisfaction how the substance entered the Horse's system. Against this background, the Panel has to examine (i) whether the Appellant could prove to its satisfaction that there was no fault or negligence on his side which would cause the Panel to lift the sanction imposed by the FEI Tribunal, and (ii) whether the Appellant could prove to the Panel's satisfaction that there was no significant fault or negligence, in which case the Panel could reduce the sanction.

D. *The Question of No fault or negligence*

16. Article 10.5.1 of the EADR provides: *"If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he or she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions may be eliminated in regard to such Person. When a Banned Substance or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable and other Sanctions are eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7 below"*.
17. As established by the Panel above in this award (supra para.14 & 15), the first condition provided in Art. 10.5.1 EADR (the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system) has been fulfilled.
18. The burden is on the Appellant to prove that he is not guilty of a doping offence. To this end, the Panel considered the written submissions of the Appellant, his testimony during the hearing, the testimony of the several witnesses brought forward by the Appellant as well as statements of his legal counsel during the hearing. The Panel further analyzed relevant CAS jurisprudence regarding the subject matters. Against this background, it is the opinion of the Panel that the Appellant has not succeeded in proving that he was without fault or negligence. The Appellant contends that he was not aware Rakelin contained a substance which was the source of the positive doping test of the Horse. In fact, the Panel accepts, in the Appellant's favour, that he did not intentionally provide the Horse with a Banned Substance, in other words, that he did

not know that Rakelin contained Reserpine. The Panel further assumes, in the Appellant's favour, that administering of Rakelin was in fact the cause for the positive doping result as established by the laboratory on 28 January 2011, and that he had relied on the veterinarian and had no intention to dope the Horse in order to improve its performance at the Event, but rather intended to calm down the Horse to overcome the problems with loading it on the truck.

19. However, lack of intent is not the relevant criteria. Non-existence of fault or negligence must be proved by the Appellant to benefit from Article 10.5.1. The Panel is of the opinion that this criteria has not been fulfilled.
20. Under the given circumstances, the Appellant acted negligently when he administered Rakelin to the Horse without making certain that it did not contain a Banned Substance. He simply followed an advice of the veterinarian with whom he had no prior personal or professional experience so he cannot claim an elimination of the sanction by arguing that he followed the recommendation of his treating physician (cf. CAS 2008/A/1565).
21. Further, the Appellant did not check the product description, which was clear and written in English, which the Appellant should have understood. Moreover, he did not follow the explicit warning concerning the use of Rakelin before using it on the Horse that would be involved in competitive activities.
22. The laboratory analysis and the quantification of its analytical results were correct and undisputed, the presence of a prohibited substance in the sample of the Appellant's Horse was clear, the applicable anti-doping rule of the FEI was one of strict liability (... an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance; CAS 2001/A/317) and the Appellant was therefore sanctioned for a two-year ineligibility period. Under these circumstances it is certainly not a valid excuse for the Person Responsible to contend that he was not aware of the warnings. In fact, athletes are presumed to have knowledge of information, which is in the public domain. In this context, the Panel notes that there is CAS case law to the effect that athletes are themselves solely responsible for, inter alia, the medication they take and that even a medical prescription from a doctor is no valid excuse for the athlete in a doping case (CAS 92/73, CAS Digest, p. 153, 158).
23. The Panel accepts the fact that the level of education of riders in the UAE concerning doping may be lower and not comparable with the level in the countries where it is considered high. However, the Appellant as an experienced rider knows, or must be expected to know, of the existence of anti-doping regulations. As such he would be expected to apply at least a minimal degree of diligence and read the description and the warning. In any case, if he was not able to understand it, he could have sought advice or consultation, before injecting it into the Horse.
24. Therefore, the Panel does not see sufficient grounds to conclude that there was No Fault Or Negligence on the part of the Appellant within the meaning of Article 10.5.1 of the EADR.

E. *The Question of No significant fault or negligence*

25. Article 10.5.2 of the EADR provides: *“If a Person Responsible and/ or member of the Support Personnel (where applicable) establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility and other Sanctions may be reduced in regard to such Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Banned Substance or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (presence of a Banned Substance or its Metabolites or Markers), the Person alleged to have committed the EAD Rule violation must also establish how the Banned Substance or its Metabolites or Markers entered the Horse’s system in order to have the period of Ineligibility and other sanctions reduced”.*
26. As already pointed out, No Significant Fault or Negligence is defined as The Person Responsible and/or member of the Support Personnel establishing that his or her 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.
- a) Examination of Arguments for and against the application of Article 10.5.2 EADR in Favour of the Appellant
27. In view of the given circumstances of the case, the Panel considered, in particular, the following aspects.
- aa) Trust
28. Although the veterinarian who sold the medicine to the Appellant and who was called by the Appellant as a witness could not be reached during the hearing, the Panel concludes on the basis of the submissions of the Appellant and the testimony of the owner of the pharmacy, Mr. Mohamed Abdullah, that the Appellant may have, indeed, bought Rakelin following the advice obtained from the veterinarian. The Panel, thus, concludes for the purposes of assessing whether Art. 10.5.2 EADR should be applied that the Appellant relied on the advice of the veterinarian in the local pharmacy while seeking medicine for calming the Horse.
29. The Appellant also relied on the veterinarian’s advice that the medicine was “natural” assuming that the natural origin itself meant that the medicine did not contain prohibited substances.
30. Further, he relied on the promise - the Panel accepts there was a promise made by Mr Al Nuamini - of the Director general of the Event Organizer that the letter would be handed over to the relevant person. The Panel interpreted the promise and the perception of promise within its broad meaning and is willing to accept that the Appellant considered the promise as an agreement between him and the Director General that the letter would be forwarded and that he would be permitted to compete if his name and the name of the Horse would appear on the entry list the next day.

31. However, the Panel takes the view that notwithstanding the trust in which the Appellant had, or may have had, in this promise, the Appellant cannot be considered as relieved of his elementary duties to check and read the production description and the warning placed on the label of the medicine as well as to satisfy himself that the substance is not identified in the Equine Prohibited Substances List.
32. Therefore, the element of trust may not be accepted as a special circumstance relieving the Appellant within the meaning of Art. 10.5.2 EADR.
33. The same applies to the argument of the Appellant (supported by the testimony of the expert witness, Dr. Krebs) that in the UAE a specific pharmacy and veterinarian system exists. First, in the view of the Panel the Appellant did not establish that this system is, indeed, very different from what is customary in many other countries of the world. According to the expert witness called by the Respondent, Dr. DalGLISH, there is an established system for importation, licensing and selling of medicine in reputable pharmacies based on prescriptions as in many other countries in the world, and, therefore, the Panel believes that even after the hearing, this question of the actual pharmacy and veterinarian system in the UAE must be left open. However, even if this fact does not by itself exclude the possibility that the Appellant did actually buy Rakelin in the pharmacy and the Panel did accept, in favour of the Appellant, that he actually bought Rakelin in the local pharmacy without prescription and trusted on the advice of the veterinarian, for the reasons set out above, such argument may not be qualified as a special circumstance in the present case allowing application of Art. 10.5.2 EADR.

ab) Acting *Bona Fide*

34. The Panel considers that disclosure of the administration of the medicine, even though by means of a simple letter and not using the official FEI forms, demonstrates that the Appellant did not try to cover anything up and that he tried to be transparent. In the view of the Panel, he was acting *bona fide*, because he disclosed the fact that he administered Rakelin before the Event and did not try to cover that fact. On the other hand, however, the Panel takes the view that in light of the applicable regulations the Appellant may not rely on disclosure and a third party promise to comply with his duties under the FEI rules. The Panel rather follows the Respondent's view that the Appellant's good faith based on the Appellant's trust that the Event Organizer would obtain authorization on his behalf and that in the existence of a mutual agreement in this respect is not sufficient to discharge him, since the Appellant should have known that any efforts to obtain an ETUE for a Banned Substance would have been in vain. Consequently, acting *bona fide* cannot be accepted by the Panel as a special circumstance permitting a reduction of the sanction in accordance with Art. 10.5.2. EADR.

ac) The nature of the letter

35. Despite the fact that the FEI introduced a strict system for obtaining ETUEs, it was the Appellant's perception that he acted correctly. The letter handed by the Appellant to Mr Al Nuamini can be seen as a certain kind of disclosure and supports the Appellant's statement that he did not act with intention to get a competitive advantage. Therefore, the Panel considered whether the letter may be qualified as a substitute (also taking into consideration that the educational level concerning anti-doping, reporting etc. in the UAE may not be optimal) for an official ETUE. However, the Panel concludes that the letter cannot be seen as a substitute for the official forms. The letter can be described as a general and informal request including various questions. It does, however, not meet the requirements and criteria of the FEI official forms. Moreover, the Appellant did not follow the relevant procedure provided for by the FEI rules. Therefore, the Respondent's argument that there was no evidence of receipt of the letter, that only the club rider remembered that the letter was handed over to the Director General of the Event Organizer and that the latter promised to forward it to the FEI veterinarian, are obsolete. Against this background the Panel concludes that the letter and its delivery to the Event Organizer's Director General do not and could not serve as a means substituting for the relevant FEI forms and procedures even if the Panel considered that the letter was actually delivered and the Director general of the Event Organizer promised to forward the letter to the relevant person.

ad) Education

36. The Respondent presented several activities concerning its educational efforts in the area of competition and anti-doping in the period before the present case occurred. However, following the testimonies at the hearing, the Panel considers the level of education in the UAE as potentially not comparable to the level in benchmark countries and dissemination of booklets and guidance at the national level in the UAE may not be adequate. Further, it appears that the Arabic translation of relevant documents was available only ten days prior to the Event. These circumstances could be qualified as important and exceptional for the present case.
37. Moreover, the Appellant stressed that the revised 2011 FEI Equine Prohibited Substances list presented by the Respondent as exhibit R-6 came into effect on 4 April 2011, i.e. almost three months after the Event. However, Reserpine was not marked as "New", i.e. as a substance that was newly added against the 2010 list, so that the Panel concludes that Reserpine was already contained in the 2010 list.
38. Given that the Appellant, being a long-term experienced competitor participating at approximately 50 competitions per year, is not a newcomer in the equine sports and anti-doping rules were not inaugurated completely from scratch at the end of 2010 must be expected to be familiar with the basic and fundamental rules and regulations regarding doping and the above mentioned possible flaws in the education in the UAE cannot outweigh these duties of the Appellant.

39. The Panel, therefore, concludes that although accepting a lower educational level in the UAE, this fact cannot be qualified as a special circumstance in the present case allowing a reduction of the sanction pursuant to Art. 10.5.2 of the EADR.

ae) Other arguments

40. Other arguments brought forward by the Appellant as mitigating factors (such as no prior event of doping by the Appellant in his entire career; no intent to improve results of the Horse; low dosage administered only to calm down the edgy Horse, no comparability to doping cases of athletes with the clear intention to cheat) cannot by the Panel be individually qualified as a special circumstance in the present case.

af) The “Totality of the Circumstances”

41. Appellant presented most of the above arguments as “mitigating circumstances”. They were individually rejected as “special circumstances” above. However, the Panel also followed the standard that *“The Panel must look to the totality of the circumstances in evaluating whether Respondent’s case is indeed ‘truly exceptional’*. The Panel, therefore, made a further analytical step and considered all possible mitigating factors as a whole. However, also in light of previous CAS jurisprudence the Panel concluded that these factors do not, in sum, reach the threshold for a reduction of the sanction in accordance with Art. 10.5.2 EADR.

42. Arguments, which prevent application of Article 10.5.2 in favour of the Appellant include that the Appellant (i) is a experienced competition rider competing 50 weekends per year; (ii) is a stable owner, therefore he performs systematic activities with horses; (iii) bought Rakelin in local pharmacy not trying to load the Horse using other methods or medicine, he simply relied on the local veterinarian’s advice knowing that the veterinarian did not even see the Horse and was not informed whether Rakelin has been bought for a racing horse; (iv) administered Rakelin himself despite the fact that instructions on the package demand administering by the veterinarian.

43. As a concluding remark the Panel notes that all of the above possible mitigating factors relate to the period after the Appellant had administered the substance. As the FEI Equine Prohibited Substance List does not distinguish between substances that are forbidden during competitions only and those the use of which is permanently forbidden, it appears that the simple administration of Rakelin to a horse that is registered for participation at FEI competitions, irrespective of whether or not the Horse did actually participate at the Event, may constitute an anti-doing rule violation. In other words, any steps undertaken by the Appellant after injecting the substance could have been in vain in light of Art. 10.5.1 and 10.5.2 EADR. The Panel notes that the Respondent did not bring forward this argument. However, in the Panel’s view the question whether behaviour after the injection of a Banned Substance can meet the threshold of Art. 10.5.1 and 10.5.2 EADR at all or whether it must be disregarded for purposes of application of these provisions, can be left open for the purposes of this award, as the Panel

concludes that the Appellant's behaviour after injecting the substance would anyhow, i.e. even if, in principle, admissible, not meet the strict requirements under Art. 10.5.1 and 10.5.2 EADR.

ag) CAS Jurisprudence

44. CAS jurisprudence is based on the standard that the athlete may benefit from the exceptions comparable to the FEI Article 10.5.2. (10.5.2. WADC) where circumstances were truly exceptional (CAS 2004/A/690, at 72; CAS 2006/A/1025, at 11.5.9; CAS 2009/A/1870, at 64, 111, 117, 118, 119). None of the circumstances in the present case qualify as truly exceptional following the criteria as set in CAS jurisprudence.
45. The athlete cannot be considered as bearing the circumstance which the standard that the athlete shows good faith efforts *"to leave no reasonable stone unturned"* (CAS 2009/A/1870 at 120; quoting CAS 2008/A/1510, § 7.8) before ingesting. The standard is set in CAS 2009/A/1870 where the athlete *"... made the research and investigation which could be reasonably expected from an informed athlete wishing to avoid risks connected to the use of food supplements"*. The Appellant in the present case did neither consult the description, the wording on the package nor the warning.
46. The standard as set in CAS jurisprudence (2001/A/317) stating that it certainly was *not* *"... a valid excuse for an athlete to contend that he/she – personally – was not aware of these warnings"* and further *"... an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance"* is even higher than in the present case.
47. In light of the above case law and argumentation, the Panel concludes that the standard set out in CAS jurisprudence does not allow the Appellant in the present case to benefit from the "no significant fault or negligence" exception.

b) Conclusion

48. In order to benefit from the "no significant fault or negligence" rule, the Appellant must show how the prohibited substance entered the Horse's system, and the Appellant was able to do so to the Panel's satisfaction. However, the Appellant failed to establish that he bears no significant fault or negligence pursuant to Art. 10.5.2 EADR. The Panel cannot, in particular, reach the conclusion that the Appellant exercised "utmost caution".
49. The Panel followed the standard as developed in CAS jurisprudence understanding that the "utmost caution" (as in CAS 2006/A/1025, at 11.4.3) demands that the athlete must establish, to the satisfaction of the Panel, that the athlete took all of the steps that could reasonably be expected of him to avoid ingesting prohibited substance and (b) it would be unreasonable to require the athlete to take any other steps. The approach is supported by other CAS decisions. In the present case the Appellant is responsible for the presence of a prohibited substance in the Horse's system, the Appellant is an experienced athlete and it would be indeed negligent for

an athlete willing to compete in national and international events to use a medical product, “*not leaving no reasonable stone unturned*” (standard as developed in CAS 2009/A/1870 at 120), in researching whether such a substance might cause effects prohibited by anti-doping rules.

50. The issue whether an athlete’s negligence is “significant” has been much discussed in the CAS jurisprudence (*supra e.g.*, in the cases CAS 2005/A/847; CAS 2008/A/1489, CAS 2008/A/1510; CAS 2006/A/1025; CAS 2005/A/951; CAS 2004/A/690; CAS OG 04/003) offering guidance to this Panel. Two principles are usually underlined with respect to the possibility of finding the athlete’s negligence, not significant. A period of ineligibility can be reduced based on no significant fault or negligence, only in cases where the circumstances are truly exceptional and not in the vast majority of cases (From CAS 2009/A/1870 at 117: for instance, a reduced sanction based on no significant fault or negligence can be applied where the athlete establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances and the athlete exercised care in not taking other nutritional supplements; cf. CAS 2008/A/1489 & 1510, at § 7.4, quoting from the official commentary of the WADC). After examining all circumstances of the present case, the Panel considers that it is not possible to find any of the circumstances proven to be truly exceptional. In conclusion, the Appellant cannot benefit from a reduction of the sanction based on the no significant fault or negligence rule.

F. *Concluding Remarks*

51. The Panel recognizes that, as has been stressed by the Appellant’s counsel, the present case is significantly different from cases where the athletes intentionally cheated with the aim of improving their performance. The Panel accepts that the Appellant did not inject Rakelin with the intention of improving the Horse’s performance during the Event. Therefore, the Panel also considered whether the CAS jurisprudence and/or basic principles of law would allow for a reduction of the standard sanction of two years, given that the Appellant does not meet the requirements provided in Art. 10.5.2 EADR. Thereby, the Panel, in particular, considered that, as a rule, it is well established that a two-year suspension for a first doping offence is legally acceptable and commonly recognized in WADA rules and CAS decisions. The Panel, however, also considered CAS decisions where the standard sanction was reduced for reasons of violation of the principle of proportionality (e.g. CAS 2006/A/1025). However, the Panel takes the view that the circumstances of the present case are not that exceptional that would justify the Panel to conclude that Art. 10.5.2 EADR would “*not provide a just and proportionate sanction*”, i.e. that there is a gap of the EADR that must “*be filled by the Panel applying the overarching principle of justice and proportionality on which all systems of law, and the WADC itself, is based*” (CAS 2006/A/1025, p. 39). Although the Panel accepts that the Appellant did not administer the substance with the aim of improving the Horse’s performance and did, thus, act significantly different than athletes that want to cheat, the Panel must apply the relevant laws and regulations as currently in force. These laws and regulations, in particular the provisions of Art. 10.5.2 EADR, do not allow the Panel to reduce the sanction of two years imposed by the FEI Tribunal.

### **Commencement of ineligibility period**

52. The Appellant relies on Article 10.9.2 (Timely Admission) of the EADR providing that *“Where the Person Responsible ... admits the EAD Rule violation after being confronted with the EAD violation by the FEI, the period of ineligibility may start as early as the date of Sample collection ...”*. The Appellant did not request an anticipated commencement before the FEI Tribunal, however, he requested that in the Appeal Brief. In accordance with the Rule R57 (Scope of Panel’s Review, Hearing) of the Code that *“The Panel shall have full power to review the facts and the law ...”* the Panel considers Appellant’s arguments in respect of commencement date of the suspension as put in the Appeal Brief and at the hearing relevant, persuasive and stronger than those of the Respondent.
53. The Panel accepts the Respondent’s argument that the FEI decision was made under the assumption that the Appellant had not complied with provisional suspension, because he was competing after the notification of the violation.
54. However, the Panel accepts the Appellant’s explanation that (i) the national federation information relating to his participation at the events was ambiguous, (ii) he stopped competing when he received a correct response and (iii) fairness requires the Panel to discount these additional weeks. This approach is supported by CAS jurisprudence and the ambit of Article 10.9.1. Though the provision relates to delays not attributable to the person responsible it supports the decision of the Panel in respect of fairness concerning commencement of the ineligibility period, namely sample test results were available to the FEI on 28 January 2011, the notification of suspension to the athlete was made on 21 February 2011, immediately the next followed by his written statement and waiving the B sample test on 23 February 2011. Until 16 May 2011, the Appellant did not receive the answer whether he could compete and waited until 4 August 2011 when he received the award.
55. According to the above, the Panel finds that the ineligibility period should start on 13 January 2011, when the Horse was selected for blood sample testing, and will end 12 January 2013.

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr Omran Ahmed Al Owais is partially upheld.
2. The FEI Tribunal Decision of 4 August 2011 is amended as follows: The period of two years ineligibility shall commence on 13 January 2011.
3. The other items of the FEI Tribunal Decision are confirmed.
- (...)
6. All further and other claims for relief are dismissed.