Arbitration CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. Fédération Equestre Internationale (FEI), award of 1 March 2016

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Equestrian (jumping)
Doping (propoxyphene and norpropoxyphene)
Delegation by the rider of his/her duty of caution or due diligence
Alleged failure of the FEI to inform a rider about problems with the use of a substance and PR's responsibility
Mislabeling of a substance or non-disclosure of the administration of a substance by a third party to the horse
Interpretation of the Federations' Anti-Doping Rules in accordance with the commentary to the WADC

1. **A rider cannot rely upon the owner's statement that the horse had been given no medication as there is no more consistent theme in CAS jurisprudence than that *"the duty of caution or due diligence is non-delegable". A fortiori*, a rider cannot rely on any medical advice given to the owner. Double delegation does not decrease the rider's obligations; it aggravates it.**

2. **A rider cannot rely on the alleged failure of the FEI to inform him/her as a member of the FEI community about any problems with the use of a substance. Such attempted shifting of responsibility to the governing body is not vouched for in the World Anti-Doping Code (WADC) or in its derivatives such as the FEI equine anti-doping rules, indeed is antithetical to the fundamental principle that the Person Responsible (PR)'s responsibility to ensure that his/her horse had no prohibited substances in its system on the day of the event was his/her own and no-one else's.**

3. **There is nothing on the face of the applicable 2014 rules which entitles a rider to rely on the mislabelling of the substance or the non-disclosure of the administration of the prohibited substance by a third party to the horse by way of defence to a charge of anti-doping violation. Neither factor is mentioned expressly or impliedly in those rules.**

4. **The Federation's Anti-Doping Rules do not, and did not ever, contain commentary sections similar to the WADC. But CAS panels have previously accepted that they must be construed consistently with it in accordance with their avowed purpose.**

I. PARTIES

1. Mr Mohammed Shafi Al Rumaithi (the "Appellant") is a national of the United Arab Emirates, registered with the Fédération Equestre Internationale (the "Respondent" or "FEI") as a Jumping rider since 2009. He is considered the Person Responsible ("PR") in accordance with

Article 118.3 of the FEI General Regulations (23rd Edition, 1 January 2009). Until the occasion which gave rise to this appeal he had a clean record in terms of compliance with the imperatives of the FEI equine anti-doping rules (the "EAD rules") which prohibit the administration of certain substances ("Banned Substances") to competition horses.

2. The FEI is the international governing body for equestrian sports, including jumping. As part of its governance responsibilities, the FEI issues regulations to protect the integrity of the sport, including the EAD Rules. The FEI has its registered seat in Lausanne, Switzerland.

3. The Appellant appeals against the decision of an FEI Tribunal dated 29 July 2015 (the "Decision") imposing on him a sanction of 2 years prohibition from competition (the "sanction") as a result of prohibited substances being found in the blood of Royal des Fontaines (the "Horse") which he rode at an FEI sanctioned competition in the CSI2 in Ghantoot, United Arab Emirates, (the "event"). The appeal is against sanction only.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 1 November 2014, the Appellant rode the Horse in the Event and finished in third place.

6. On the same day, the Horse was selected to be tested for prohibited substances.

7. The analysis of the Horse's blood sample was performed at the Hong Kong Jockey Club Racing Laboratory, a FEI-approved laboratory. It tested positive for Propoxyphene and its metabolite Norpropoxyphene.

8. Propoxyphene and Norpropoxyphene are opiate analgesics (i.e. painkillers) and are classified as Banned Substances under the EAD Rules. Therefore, their administration to competition horses is prohibited at all times.

9. On 9 December 2014, the Appellant and the Owner were notified of the positive result by United Arab Emirates Equestrian & Racing Federation ("UAE NF"). Neither the Appellant nor the Owner requested that the B-sample be analysed and both accepted the result of the A-Sample.

10. The Appellant was provisionally suspended for two months, from the date of notification (9 December 2014) until (9 February 2015).

11. The Appellant's provisional suspension was not challenged and he served the entire period of the suspension.

B. Proceedings before the FEI Tribunal

12. On 18 December 2014, pursuant to a request by the Appellant, a preliminary hearing took place before the FEI Tribunal.

13. At that hearing, the Appellant admitted that, albeit unknown to him, the Horse had been administered an equine product named Fustex.

14. On 19 December 2014, the FEI issued a preliminary decision deciding to maintain the previous suspension given that the presence of the prohibited substance was not disputed.

15. In the Decision itself, the FEI Tribunal confirmed that there had been an anti-doping rule violation under Article 2.1 of the EAD Rules (which prohibits "[t]he presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample"), in that Propoxyphene and Norpropoxyphene were present in the sample collected from the Horse at the Event and therefore ruled that the Appellant's result was automatically disqualified in accordance with Article 9 of the EAD Rules.

16. The FEI Tribunal also held that the cumulative effect of all evidence was sufficient for the Appellant to establish – on a balance of probability – how the Prohibited Substances had entered the Horse's system, but found that the Appellant had not established that he bore "No (Significant) Fault or Negligence" for the rule violation, as he had not complied with the duty imposed on him under Article 2.1.1 of the EAD Rules to ensure that no Banned Substance is present in the Horse's body at any time. Accordingly, the FEI Tribunal (i) imposed on him a two-year period of Ineligibility pursuant to Article 10.2 of the EAD Rules; and (ii) ordered him to pay a fine of CHF 1, 000 and a contribution of CHF 1, 000 towards the legal costs of the proceedings.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 28 August 2015, the Appellant filed his statement of appeal against the FEI with respect to the Appealed Decision in accordance with Article R47 *et seq*. of the Code of Sports-related Arbitration (the "Code"). Within his statement of appeal, the Appellant nominated the Hon. Michael Beloff Q.C., barrister in London, United Kingdom, as arbitrator. Moreover, the Appellant requested that the FEI voluntarily produce certain documents and audio recordings.

18. On 8 September 2015, the FEI agreed to voluntarily produce certain documents and audio recordings as requested by the Appellant, but rejected the request for the production of all documents received from the Hong Kong Jockey Club Racing Laboratory as irrelevant. Moreover, the FEI proposed that Mr Beloff acted as Sole Arbitrator in this appeal, in lieu of a three-member panel.

19. Later that same day – 8 September 2015 – the Appellant agreed with the FEI's proposal to refer this appeal to Mr Beloff as Sole Arbitrator. In addition, the Appellant made further requests for additional documents from the FEI.

20. On 10 September 2015, the FEI made its initial voluntary production of certain documents and audio recordings in response to the Appellant's request.

21. On 14 September 2015, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr Beloff as Sole Arbitrators in accordance with Article R54 of the Code.

22. On 23 September 2015, the Appellant filed his appeal brief in accordance with Article R51 of the Code.

23. On 5 October, the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties that the Appellant's outstanding requests for various documents and recordings was denied on the basis that such requests were overbroad, and that the Appellant failed to adequately establish that such documents are likely to exist, or if they do, to be relevant.

24. On 19 October 2015, the FEI filed its answer in accordance with Article R55 of the Code.

25. On 1 and 4 December 2015, the Appellant and FEI, respectively, signed and returned the Order of Procedure in this procedure.

26. On 8 December 2015, a hearing was held in this appeal. The Sole Arbitrator was assisted by Mr Brent J. Nowicki, Counsel to the CAS, and was joined by the following:

For the Appellant:

Mr Juan de Dios Crespo Pèrez
Mr Paolo Torchetti
Mr Mohammed Shafi Al Rumaithi (by telephone)
Mr Jumaa Al Rumaithi (by telephone)

For the FEI:

Mr Mikael Rentsch
Ms Aine Power
Ms Carolin Fischer

27. At the inception of the hearing, the parties confirmed that they had no objection to the Sole Arbitrator hearing this appeal. At the conclusion of the hearing, the parties confirmed that their right to be heard has been fully respected.

28. Subsequent to the hearing by letter of 22nd February 2016 the Appellant sought to introduce a decision of an FEI Tribunal dated 16th November 2015 ("The FEI decision") which, *inter alia*, considered to what extent substantial assistance provided by someone found guilty of an anti-doping violation might bear upon sanction. By letter dated 24th February 2016 the FEI

objected to its introduction on the basis that the FEI decision had been in the public domain prior to the hearing and there were no exceptional circumstances under CAS Code R41 such as would justify it.

29. The Sole Arbitrator agrees with the FEI and declines to allow the Appellant to rely upon the FEI decision. Having considered it *de bene esse* he does not see that even were it part of the record, it would affect his own decision as discussed hereafter.

IV. SUBMISSIONS OF THE PARTIES

30. The Appellant's submissions which replicated in substantial measure those advanced before the FEL Tribunal, may, in essence, be summarized as follows:

(i) He himself had promptly admitted the anti-doping rule violation after being informed of it by the FEI and was entitled to a reduction in the period of ineligibility for that reason alone;

(ii) He had demonstrated how the prohibited substance entered the Horse's system (a necessary if not a sufficient condition for elimination or reduction of the period of ineligibility);

(iii) He was, however, not guilty of any significant fault or negligence so satisfying the other condition for such benign consequence for the following main reasons:

(a) The Owner had told him that the Horse had not had any medication.

(b) The Owner had reasonably hired Dr. Mahmoud to deal with medical issues pertaining to the Horse on account of his background and specialty in equestrian competitions, and Dr. Mahmoud, after examination of the Horse, had recommended that Fustex be used.

(c) Dr. Mahmoud did not say that Fustex contained any prohibited substances, despite the Owner relying on the Doctor, and the Appellant relying on the Owner, for his professional opinion.

(d) On 1 October 2014 at 14.00, two hours prior to the event, the Horse was administered Fustex by a groom employed in the Owner's stable at the direction of the Owner who relied on the advice of Dr. Mahmoud.

(e) The Appellant had no knowledge of such administration at the time and had properly delegated medical and preparatory functions to the Owner.

(f) The label on the bottle of Fustex of the kind that was administered to the Horse does not identify the presence of Propoxyphene or Norpropoxyphene and indeed states that the "product is designed for Sport Horses".

(g) At or about the end of 2012 and the start of 2013, the head of the Veterinary Department of the UAE NF, Dr. Sommerseth, delivered to the FEI several bottles of Fustex for testing. The FEI tested the substance and communicated to Dr. Sommerseth at the end of 2012 that Fustex contained prohibited substances but Dr. Sommerseth never disclosed these findings to the Owner or the Appellant.

(h) On 7 September 2015, Dr. Sommerseth was suspended indefinitely by the FEI as a FEI official for consistent non-compliance with FEI rules and Regulations over the course of several years.

(i) It was only on 17 July 2015 that the FEI published the information that Fustex contained prohibited substances via a press release allegedly almost a year and a half after it knew that Fustex should be prohibited.

(j) The EAD rules in force from 1 January 2015 expressly provided that even if the presence of a banned substance in a sample came from a mislabeled supplement and/or its administration by member of the Support Personnel without disclosure to the Person Responsible, neither factor could be relied upon to exculpate the PR of Negligence to any degree. Therefore, in application of the *contra proferentem* principle or the principle *venire contra factum proprium* the previous EAD rules in force at the time of the Event implicitly allowed such factors to be taken into account for that purpose

(iv) Because of some or all of the matters set out under (iii), the Appellant was entitled to elimination or reduction of the period of ineligibility based on exceptional circumstances of no fault or negligence or no significant fault of negligence.

(v) Further, or in the alternative, the Appellant's sanction should be backdated to the time of the Sample because of substantial delay for which he was not responsible, between taking of the sample and the Decision.

31. In its appeal brief, the Appellant made the following requests for relief:

1. To accept this appeal against the decision rendered by the FEI Tribunal dated the 29th of July, 2015.

2. To adopt an award annulling the Decision stating that:

a. the period of ineligibility shall be set as from the date in which the Horse was selected from sampling, i.e. as from the 1st of November 2014.

b.1. The Appellant established that he bore No Fault or Negligence for the rule violation so the period of ineligibility imposed by the FEI Tribunal in the Decision shall be eliminated.

Or, alternatively

b.2. The Appellant established that he bore No Significant Fault or Negligence for the rule violation so the period of ineligibility imposed by the FEI Tribunal in the Decision shall be reduced to one-half.

c. In accordance with Article 10.6.3 as per the Appellant's Prompt Admission of an Anti-Doping Rule Violation after being confronted by the FEI the period of Ineligibility shall be ADDITIONALLY reduced down for one year, i.e. up to a minimum of one half of the otherwise applicable period of ineligibility.

3. Independently of the type of the decision to be issued, the Appellant request the Panel:

a. To fix a sum of 25, 000 CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.

32. The FEI's submissions may, in essence, be summarized as follows:

(i) Whether the Appellant's prompt admission justified a reduction of the period of Ineligibility depended "*on the seriousness of the violation and the Person Responsible's degree of Fault*". No such reduction was justified on the facts (*see* (ii) below).

(ii) Albeit the Appellant had established how the prohibited substance entered the Horse's system, he had failed to show that he was not guilty of any or any significant fault or negligence. On the contrary, he had clearly failed in his duty of utmost caution to ensure that the Horse had not ingested any prohibited substance

(iii) The Appellant's interpretation of the No Fault/Negligence rule, including the Appellant's interpretation of the changes that have been introduced into the 2015 version of that rule was incorrect.

(iv) There had been no such delay as justified any backdating of the sanction.

33. In its answer, the FEI made the following requests for relief:

a) to confirm those aspects of the Decision that are not challenged by the Appellant on Appeal, namely that:

i. a Banned Substance was present in the Horse's system at the Event, in violation of Article 2.1 of the EAD Rules; and

ii. accordingly, the Appellant's results at the Event are automatically disqualified, in accordance with Article 9 of the EAD Rules;

b) to reject the Appeal to the extent it challenges other aspects of the Decision, and so to affirm those aspects of the Decision, namely:

i. the imposition of a two-year ban on the Appellant further to Article 10.2 of the EAD Rules;

ii. the imposition of a fine of CHF 1, 000 further to Article 10.2 of the EAD Rules; and

iii. the order that the Appellant contribute CHF 1, 000 towards the legal costs of the judicial procedure;

c) to reject the Appellant's request for an order that the FEI make a contribution towards the costs he has incurred in making this Appeal; and

d) in accordance with Article R.65.3 of the CAS Code of Sports-related Arbitration, to order the Appellant to pay a contribution towards the legal fees and other expenses incurred by the FEI in defending this appeal.

V. JURISDICTION

34. Art. 12.2.1 of the EAD Rules states:

In cases arising from participation in an International Event or in cases involving FEI Registered Horses, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before CAS.

35. Moreover, Article R47 of the Code provides:

An appeal against the decision of a federation, association or sport-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.

36. No party has objected to the jurisdiction of the CAS to resolve this appeal. Indeed, both parties confirmed the jurisdiction of the CAS in the Order of Procedure. Therefore the CAS has jurisdiction to resolve hear this appeal.

VI. ADMISSIBILITY

37. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

38. Art. 12.2.2 (a) of the Equine Anti-Doping Rules, 1st Edition ("EAD Rules") expressly grants the PR the right to appeal a decision of the FEI Tribunal to CAS.

39. Art. 12.3 of the EAD Rules provides the following:

The time to file an appeal to CAS shall be thirty (30) days from the date of Receipt of the Hearing Panel decision by the appealing party.

40. The decision of the FEI Tribunal was dated 29 July 2015. The Appellant's Statement of Appeal was filed with the CAS on 28 August 2015, i.e., within the thirty (30) day deadline set out in Art. 12.3 of the EAD Rules. The statement of appeal, therefore, was filed on a timely basis and is admissible.

VII. APPLICABLE LAW

41. Article R58 of the Code provides as follows:

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 or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

42. The Sole Arbitrator must therefore apply the provisions of the EAD Rules. Those that apply in this case are the 1st edition, effective 5 April 2010, with updates effective from 1 January 2014, subject to one rule effective from 1 January 2015, discussed below, pursuant to the principle of *lex mitior*. Subsidiarily, the Sole Arbitrator will apply Swiss law as the registered seat off the FEI is in Lausanne, Switzerland.

VIII. MERITS

43. In the Sole Arbitrator's view, and with due deference to Mr Crespo's ingenious arguments, the outcome of this appeal depends upon the application of the well-established principles of anti-doping law, namely:

(i) If a Banned Substance is found to be present in a horse, that constitutes an anti-doping rule violation for which the rider of the horse (as PR) is strictly liable;

(ii) The PR is presumed to be at fault for the presence of the Banned Substance in the horse's system;

(iii) If PR does not rebut that presumption, there will prima facie be imposed upon him (or her) a standard period of Ineligibility of two years;

(iv) That period can only be eliminated if the PR establishes an absence of fault or negligence

(v) That period can only be reduced by up to 50% if the PR establishes an absence of significant fault or negligence

(vi) If the PR cannot show No or No Significant Fault or Negligence then the two year period of Ineligibility stands, but, inter alia (a), a prompt admission may lead to a reduction of the two year period of Ineligibility; (b) any period of provisional suspension is credited against the two year period of Ineligibility; and (c) in certain circumstances

of unjustified delay the starting date of the period of Ineligibility may be back-dated to as early as the date of sample collection

44. The Appellant cannot rely upon the owner's statement that the Horse had been given no medication as there is no more consistent theme in CAS jurisprudence than that *"the duty of caution or due diligence is non-delegable"* (CAS 2013/A/3318, para. 71).

45. *A fortiori*, the Appellant cannot rely on any advice of Dr. Mahmoud given to the owner, particularly when he was unaware of that advice at the time of the event. Double delegation does not decrease the Appellant's obligations; it aggravates it. In CAS 2014/A/3591 (*"Glenmorgan"*) the Panel said:

"The Panel does not consider that the decision in Turner supports the proposition that the EAD Rules should be interpreted as allowing a rider to delegate his explicit responsibility as PR for rule violations, so as to avoid strict liability for a positive test by stating that, as a result of the delegation, he or she had no knowledge or means of knowing of the violation or ability to exercise control over the horse and circumstances which gave rise to the violation" (para. 169).

46. The facts in *Turner v. BEF* (FEI Tribunal 1 August 2014) were wholly distinguishable involving, as they did, only the delegation by the PR to the owner of the duty to present the horse for testing Glenmorgan (para 155).

47. The Appellant cannot rely on the alleged failure of the FEI to inform him as a member of the FEI community about any problems with the use of Fustex. Such attempted shifting of responsibility to the governing body is not vouched for in the World Anti-Doping Code (the "WADC") or in its derivatives such as the EAD rules, indeed is antithetical to the fundamental principle that the PR's responsibility to ensure that his Horse had no prohibited substances in its system on the day of the Event was his own and no-one else's.

48. In any event, the Sole Arbitrator accepts that it was not before the CAS Panel confirmed in its decision in *Glenmorgan* on 8 June 2015 that "the vial of Fustex more likely than not contain(s) Propoxyphene" (para.194) that the FEI could prudently publish an accurate warning and that the gap between the date of the CAS decision and the publication of that warning is sufficiently explained by the FEI's need to take certain steps (i.e. contacting the manufacturer of Fustex to avoid any potential libel actions and liaising with the FEI List Group and Veterinary Committee in relation to the warning's final text). Before the date of that decision the evidence shows that there was uncertainty as to precisely what prohibited substances Fustex might contain.

49. The Sole Arbitrator adopts the same approach *mutatis mutandis* to the Appellant's attempted reliance on the lack of communication to him by Dr. Sommerseth of the properties of Fustex. The evidence submitted by the Appellant himself, an email conversation between Dr. Sommerseth and Dr. Terence Wan, Head of HKJC Racing Laboratory in December 2012, shows that Fustex samples analysed by the HKJC Racing Laboratory did not always contain the same Prohibited Substance, but had in the past returned positive findings for Stanozolol, as well as Propoxyphene. Dr. Wan's conclusion was: *"Apparently, different drugs including*

Stanozolol can be smuggled into the UAE as Fustex. Or, whenever a positive finding is reported one can conveniently blame it on the use of an undetectable Fustex containing no prohibited substances". It follows that there was at that date considerable uncertainty as to which substances may be contained in Fustex, which persisted until the date of the CAS Glenmorgan decision (*see* para 46 above) so that any communication by Dr. Sommerseth would have been premature and potentially misleading. In any event, yet again, the Appellant cannot in principle rely upon such non-communication. Finally, the Appellant failed to show why Dr. Sommerseth's later suspension had any relevance to the case in hand

50. In the Sole Arbitrator's view, what the Appellant did not do is as fatal to this limb of his appeal limb as what he did do. As the CAS panel said in *Glenmorgan*, *"it is not unreasonable to expect of the rider that, even if he has had no previous experience with the horse, to request inspection of the medical and nutritional records prior to the event. In so doing, the PR serves as an independent "controller" of the condition of the horse and acts in the horse's welfare"* (para. 210). The Appellant did no such thing or anything like it. He has not claimed that he requested to see the medical or nutritional records of the horse (or made any inquiry of the groom); he has merely said that upon his request the Owner confirmed that the Horse was free of medication. To take such statement at face value manifestly falls far short of an acceptable standard of care.

51. The FEI Tribunal found that the Owner himself should have done more; searched online for Fustex; contacted the manufacturer, or indeed the UAE NF. The Appellant did not even put himself in the position where he could have taken any such steps since their taking depended on knowledge that Fustex had been administered to the Horse, whereas the Appellant's evidence was precisely that he did not know that critical fact. The Appellant's candour does him credit; but is of no assistance to him in prosecuting his appeal.

52. The Appellant's submission that because the 2015 EAD rules expressly stipulate that certain factors, i.e. supplement mislabelling, undisclosed third-party administration, are not available to support a case of no significant fault or negligence, prior thereto they must have been so available is based on no known canon of construction. The canons of construction prayed in aid by the Appellant do, the Sole Arbitrator accepts, justify a strict approach to disciplinary rules; but there is no ambiguity in the EAD rules which applied at the material time under the rubric "Elimination or Reduction of the Period of ineligibility based on Exceptional Circumstances":

10.4.1 If the Person Responsible … establishes in an individual case that he/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.

10.4.2 If a Person Responsible establishes in an individual case that he 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.

53. There is, therefore, nothing on the face of the applicable 2014 rules which entitles the Appellant to rely on the mislabelling of the substance or the non-disclosure of the

administration of the prohibited substance by a third party to the Horse by way of defence to a charge of anti-doping violation. Neither factor is mentioned expressly or impliedly in those rules. Further, the Introduction to the EAD Rules notes that they *"have intentionally been modelled after the 2009 WADA Model Code for human athletes"* (i.e. the WADC). All that has happened as a matter of record is that matters previously in the notes to the WADC have migrated to its main text. Belt has been added to braces; but braces suffice.

54. The Sole Arbitrator takes into account the fact that the EAD rules do not, and did not ever, contain commentary sections similar to the WADC. But CAS panels have previously accepted that they must be construed consistently with it in accordance with their avowed purpose (*see* e.g. CAS 2013/A/3318; CAS 2013/A/3124). Indeed, *Glenmorgan* itself provides a useful example of that principle in practice. There, the positive finding had also been caused by the action of an individual other than the PR (one Dr. Pasha, the stable's head vet) but not disclosed to him. The FEI Tribunal had held nonetheless that the PR had not succeeded in establishing that he bore No (Significant) Fault or Negligence for the rule violation. (para. 11.10 of the FEI Tribunal Decision in Case 2012-BS01 dated 7 April 2014). CAS, on appeal, did not find *ipso facto* No Fault/No Negligence for the PR, but simply reduced the sanctions, after having evaluated the degree of care shown by the PR (para 240). In *Glenmorgan*, the *"the particular PR had, with his father, implemented a system involving pre-race testing, (and) had employed experienced staff to look after his horses who were properly instructed to carry out their obligations"* (para 239). The Appellant in this case can make no remotely similar claim to due diligence.

55. In short, whether a PR has or has not been at fault, and, if so, to what degree, can only be ascertained by applying the broad principles laid down in established CAS jurisprudence to the particular facts of the case (since the facts of no two cases are identical) and the Appellant gains no comfort from either source. Neither of the two matters on which he relies provided a "get out of jail free" card in 2014 any more than they have done since the start of 2015.

56. The FEI Athlete's Guide puts the matter in simple terms, well understandable by the layman:

What are my Responsibilities?

As an Athlete, you have a responsibility to know, understand, and follow the EADCM regulations. But you do not have to be a legal expert to have this basic understanding. If you are the rider, driver, or vaulter of the horse, then you are the Person Responsible for the horse that will be held accountable for an EADCM regulation violation. This is true even if you are riding, driving, or vaulting a borrowed horse! Therefore, you need to be very careful about who you trust to care for your horses and even more so who you trust to treat your horses. In the case of a borrowed horse, you should make sure you are comfortable with the horse's treating history before competing with it. In the regulations, if a member of your support personnel does something that leads to an EADCM regulation violation, that person may be held accountable, but so will you. For example, if you rely on your veterinarian who tells you that a substance can be used on your horse without violating any rules, and later you find out that your horse has tested positive for a Prohibited Substance, you will be in violation of the rules even though you were relying on your veterinarian. Similarly, if a groom who is working for you mistakenly gives one of your competition horses medication intended for an ill horse and the competition horse later tests positive, you will be in violation of the regulations (and your groom may be also).

57. No doubt the degree of care required is high; but horses cannot care for themselves. As the Respondent put it in its skeleton argument:

The FEI believes that making the rider responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and to be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse.

The Sole Arbitrator respectfully agrees.

58. Article 6.1.3 EAD Rules 2015 version provides, so far as material, :

A Person Responsible … potentially subject to a two year sanction under Article by promptly admitting the asserted anti-doping rule violation after being confronted by the FEI, and also upon the approval and at the discretion the FEI, may receive a reduction in the period of Ineligibility down to a minimum of one half of the otherwise applicable period of Ineligibility, depending on the seriousness of the violation and the Person Responsible's degree of Fault.

59. The Sole Arbitrators accepts - as does the FEI - that *lex mitior* justifies application of this provision even if it's coming into force post-dated the anti-doping violation by the Appellant.

60. In the Sole Arbitrator's view, however, the Appellant's prompt admission, per se, does not assist him. It is notable that the Appellant has not claimed entitlement to a reduction under the immediately preceding Rule 10.6.2 of the 2015 EAD Rules presumably recognizing that his admission was not *"the only reliable evidence of the violation at the time of the admission"*, the trigger for that rule's application. The evidence of the positive test of the "A" sample was itself conclusive given the understandable choice of the Appellant not to request a test of the "B" sample. More pertinently, Rule 106.3 itself identifies a prompt admission only as a gateway through which a PR must pass before any discretion can be exercised in his favour but requires also consideration of the gravity of the offence and the care taken to avoid it. The Appellant's claim to indulgence founders on both those factors whose importance is emphasised in the Results Management, Hearings and Decisions Guidelines issued by WADA to Anti-Doping Organizations ("ADOs") to accompany the 2015 WADA Code. The presence of a Banned Substance in a Horse's system is, in itself, a very serious offence. Banned Substances are defined in the EAD rules less as "Substances (including their Metabolites and Markers)" that have been deemed by the FEI List Group to have: (a) no legitimate use in the competition Horse and/or (b) have a high potential for abuse and are prohibited at all times". Substances within this category have been identified as the most serious of the substances that are included on the FEI Prohibited List. Furthermore, the Appellant's degree of fault for all the reasons analysed above was considerable. There was and is therefore no basis for an exercise of discretion in his favour.

61. Article 10.8.1 EAD Rules 2014 version provides, so far as material,

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Person Responsible … alleged to have committed the EAD Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection …

62. For the discretion provided by this Article to be engaged at all, there must be (i) substantial delays (ii) not attributable to the Appellant (The Sole Arbitrator puts on one side the issue generated by apparently defective drafting of whether this provision can be applied if a PR has already been able to take advantage of Article.6.1.3 and shall assume without deciding in the Appellants favour that it can be).

63. To cut, a long story short after his study of the record, the Sole Arbitrator is of the firm view, that for the FEI Tribunal to render its decision within the period taken was by no means excessive for a case of this nature, *a fortiori* where two different individuals and violations had to be addressed and where the Appellant himself, while conceding liability, raised so many and diverse arguments on sanction so making himself responsible in part for any delay.

64. Where a PR violates Article 2.1 of the EAD Rules, Article 10.2 of the EAD Rules provides for the imposition of a fine of up to CHF 15, 000 "unless fairness dictates otherwise". The FEI Tribunal decided to impose a fine of only 1, 000 CHF on the Appellant (Decision at para 12.3(3)). The Appellant has not provided any reason why that modest sum should be disturbed on appeal and the Sole Arbitrator can detect none.

65. For all those reasons the Appeal is dismissed. The Appellant is sanctioned from competition for a period of 2 years from the date of the competition (i.e. 1 November 2014), with credit given for any period of suspension already served by him.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mohammed Shafi Al Rumaithi against the Fédération Equestre Internationale against the decision of the FEI Tribunal dated 29 July 2015 is dismissed.

2. The decision of the FEI Tribunal dated 29 July 2015 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.