



**Arbitration CAS 2017/A/5270 Paige Johnson v. Fédération Equestre Internationale (FEI),
consent award of 28 September 2017**

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Equestrian (Jumping)

Doping (pramoxine)

Ratification and incorporation of a settlement agreement in a consent award

Verification of the bona fide nature of the settlement agreement

1. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the contesting parties agree to a termination of their dispute in this manner. The arbitration tribunal's ratification of their settlement and its incorporation into a consent award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of their agreement.
2. It is the task of the arbitration tribunal to verify the *bona fide* nature of the settlement agreement to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

I. PARTIES

1. Paige Johnson (the "Appellant") is an American citizen and professional equestrian.
2. The Fédération Equestre Internationale (the "FEI" or the "Respondent"), is the world governing body for international equestrian events in dressage & para-equestrian dressage, jumping, eventing, driving & para-equestrian driving, endurance, vaulting, and reining. It has its registered seat in Lausanne, Switzerland.

II. FACTUAL BACKGROUND

3. From 17 to 22 January 2017, the Appellant participated in the CSI2* event in Wellington, Florida, United States of America in the discipline of jumping (the "Event"). The Appellant rode Luke Skywalker 46 (the "Horse"). During the Event, blood and urine samples were collected from the Horse.

4. On 5 April 2017, the FEI charged the Appellant with committing an anti-doping violation under Article 2.1 of the EADR, namely the presence of a banned substance – pramoxine – in the Horse’s sample. The Appellant was provisionally suspended pending determination of the charge.
5. On 14 July 2017, the FEI Tribunal found the Appellant guilty of committing an anti-doping violation under the EADR and sanctioned her with a period of one year of ineligibility from 5 April 2017 to 4 April 2018 (the “Appealed Decision”). The Appealed Decision was notified to the Appellant on that day.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

6. On 4 August 2017, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Appellant filed a statement of appeal against the Respondent before the CAS challenging the Appealed Decision. In her statement of appeal, the Appellant submitted following requests for relief:

“The Appellant respectfully requests the Panel to:

- (a) set aside the Decision dated 14 July 2017;*
- (b) eliminate or otherwise reduce the sanction imposed on the Appellant;*
- (c) order the Respondent to:*
 - (i) reimburse the Appellant her legal costs and other expenses pertaining to this appeal proceeding before CAS;*
 - (ii) bear the costs of the arbitration”.*

7. In her Statement of Appeal, the Appellant requested a deadline extension until 29 August 2017 to file her appeal brief.
8. On 10 August 2017, the CAS Court Office wrote to the parties informing them that the Appellant’s request for a deadline extension to file her appeal brief had been granted.
9. On 25 August 2017, the Appellant wrote to the CAS Court Office informing it that the status of pramoxine as a banned substance was under review by the FEI Bureau and that the parties agreed to suspend the procedure pursuant to Article R32 of the CAS Code pending a decision by the FEI Bureau on the reclassification of pramoxine.
10. On 28 August 2017, in accordance with Article R32 of the CAS Code, the CAS Court Office suspended the procedure and requested the Appellant to keep it updated on the progress of the reclassification of pramoxine.

11. On 19 September 2017, the Appellant wrote to the CAS Court Office informing it that the parties entered into a settlement agreement on that day and submitted a signed copy of the settlement agreement (the “Settlement Agreement”). In light of the fact that a Panel had not yet been fully constituted, the parties furthermore agreed to jointly nominate Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom, as a Sole Arbitrator.
12. The parties requested the Sole Arbitrator to incorporate the terms of the Settlement Agreement into a Consent Arbitral Award pursuant to Article R56 of the CAS Code:

“BEFORE THE COURT OF ARBITRATION FOR SPORT

BETWEEN:

PAIGE JOHNSON

Appellant

and

FÉDÉRATION EQUESTRE INTERNATIONALE

Respondent

***SETTLEMENT AGREEMENT TO BE INCORPORATED IN A CONSENT
ARBITRAL AWARD PURSUANT TO CAS CODE ARTICLE R56***

[...]

***NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO
THE APPROVAL OF THE CAS) TO THE FOLLOWING TERMS FOR
DISPOSAL OF THE APPEAL:***

2.1 *This appeal is admissible.*

2.2 *The Decision of the FEI Tribunal dated 14 July 2017, imposing a period of ineligibility on Ms Johnson of one year, commencing on 5 April 2017 and expiring at midnight on 4 April 2018, is set aside.*

2.3 *In accordance with the Decision of the FEI Tribunal, the FEI is satisfied that Ms Johnson established:*

(a) *how the Pramoxine entered the Horse’s system;*

(b) *that this was her first violation of the EADRs; and*

(c) *that she bore No Significant Fault or Negligence.*

2.4 *Given that the FEI Bureau has decided that:*

(a) *Pramoxine shall no longer be classified as a Banned Substance regulated by the EADRs;*

(b) *Pramoxine shall be reclassified as a Controlled Medication regulated by the ECMRs;*

and having regard for:

(c) *the fact that that the use of Pramoxine shall no longer be considered an anti-doping rule violation; and that*

(d) *Ms Johnson shall, as a consequence, be entitled to the application of lex mitior;*

the FEI agrees that, as a matter of fairness and further to the principle of proportionality, Ms Johnson's period of ineligibility shall be reduced to 3 months.

2.5 *In accordance with EADR 10.10.4 ("Credit for Provisional Suspension or Period of Ineligibility Served"), the period of ineligibility shall be deemed to have commenced on 5 April 2017 (i.e. the date on which the FEI imposed a provisional suspension on Ms Johnson) and ended on 4 July 2017.*

2.6 *In accordance with EADRs 9.1 and 10.1.2,11 the results achieved by Ms Johnson and the Horse combination at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes.*

2.7 *In addition, as previously determined by the FEI Tribunal, Ms Johnson shall:*

(a) *pay a fine of two thousand Swiss Francs (CHF 2,000);*

(b) *contribute three thousand Swiss Francs (CHF 3,000) towards the costs of the FEI judicial procedure.*

2.8 *The CAS arbitration costs (to be determined and notified by the CAS Court Office in due course) will be borne by the parties in equal parts: 50% to be paid by Ms Johnson and 50% to be paid by the FEI.*

2.9 *Each party will bear its own legal and other costs incurred in connection with this arbitration.*

2.10 *The parties hereby request that the CAS Panel issue a Consent Arbitral Award incorporating the terms of this agreement. The parties acknowledge and agree that, pursuant to CAS Code Article R59, that award will be made public by the CAS.*

2.11 *The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.*

Name: _____

Date: 19 September 2017

Name: Mike Morgan

Position: Partner, Morgan Sports Law

For and on behalf of Ms Paige Johnson

Name: _____

Date: 19 September 2017

Name: *Mikael Rentsch*

Position: *Legal Director*

For and on behalf of the Fédération Équestre Internationale”.

13. On 22 September 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr. Hovell as Sole Arbitrator.

IV. JURISDICTION

14. The Appellant relies on the preamble of the FEI Equine Anti-Doping and Controlled Medication Regulations (“EADCMR”) and Articles 12.1, 12.2, 12.2.1, and 12.2.2 (a) of the FEI Equine Anti-Doping Rules (“EADR”) as conferring jurisdiction on the Court of Arbitration for Sport (the “CAS”). The jurisdiction of the CAS over this matter is not disputed by the Respondent and is confirmed by the Sole Arbitrator.

V. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT

15. Under Swiss Law, an arbitration tribunal has authority to issue an award embodying the terms of the parties’ settlement if the contesting parties agree to a termination of their dispute in this manner. The Sole Arbitrator’s ratification of their settlement and its incorporation into this Consent Award serves the purpose of enabling the enforcement of their agreement.

16. Moreover, in accordance with Article R56 of the CAS Code:

“[...] Any settlement agreement may be embodied in an arbitral award rendered by consent of the parties”.

17. The parties have requested that the Sole Arbitrator ratify and incorporate the portion of the Settlement Agreement reproduced above into a Consent Award. It is the task of the Sole Arbitrator to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
18. After reviewing the terms of the Settlement Agreement, the Sole Arbitrator finds no grounds to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to his attention. The Sole Arbitrator notes that it is within the FEI’s powers to agree, as a matter of fairness in these specific circumstances, to apply the principle of proportionality. Pursuant to CAS jurisprudence, this principle is very occasionally accepted (and the use of it in this instance

should not be seen as a precedent for future cases, which should be judged on their own particular facts). However, in the light of the imminent reclassification of the prohibited substance, it would be in the FEI's powers to apply this principle and to remain true to public policy principles or mandatory rules of the law applicable to the dispute.

19. In view of the above, and in particular of the joint request made by the parties, the present Consent Award puts an end to the arbitration procedure CAS 2017/A/5270 Paige Johnson v. Fédération Equestre Internationale (FEI) on the terms indicated in the Settlement Agreement and those detailed below.
20. The above conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the parties to the Sole Arbitrator. Accordingly, all other prayers for relief are rejected.
21. Within the Settlement Agreement the parties requested that this Consent Award shall be made public by CAS, pursuant to R59 of the CAS Code.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby renders the following:

1. The Sole Arbitrator, with the consent of Paige Johnson and the Fédération Equestre Internationale, hereby ratifies the relevant portion of the Settlement Agreement executed by the parties on 19 September 2017 and incorporates its terms into this consent arbitral award.
 2. The arbitral procedure CAS 2017/A/5270 Paige Johnson v. Fédération Equestre Internationale (FEI) is terminated and deleted from the CAS roll.
 3. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement executed by the parties on 19 September 2017.
- (...)
6. All other requests of prayers for relief are rejected.