

CAS 2020/A/6853 Nadja Peter Steiner v. Fédération Equestre Internationale (FEI)

CONSENT ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice,
Luxembourg

in the arbitration between

Ms Nadja Peter Steiner, Jona, Switzerland

Represented by Dr. Stephen Netzle and Dr. Mirjam Trunz, Attorneys-at-Law with Times
Attorneys in Zurich, Switzerland

Appellant

and

Fédération Equestre Internationale (FEI), Lausanne, Switzerland

Represented by Anna Thorstenson, FEI Legal Counsel, Lausanne, Switzerland

Respondent

I. PARTIES

1. Ms Nadja Steiner (the “Appellant” or “Athlete”) is a professional rider in the equestrian discipline of jumping for Switzerland. She is the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations.
2. The Fédération Equestre Internationale (the “Respondent” or “FEI”) is the sole IOC recognized international governing body for the equestrian sport disciplines of Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving. Its registered office is in Lausanne, Switzerland.
3. The Appellant and Respondent are together referred to as the “Parties”.

II. FACTUAL BACKGROUND OF THE DISPUTE

4. The Appellant participated with the horse SAURA DE FONDCOMBE (FEI ID: 103CM83) (the “Horse”) at the CSI3*-W in Tetouan, Morocco from 5 to 8 October 2017 (the “Event”). As a member of the Swiss Equestrian Federation (the “SUI NF”), the latter being a member of the FEI, the Appellant was bound by the FEI Equine Anti-Doping and Controlled Medication Regulations (the “EADCMRs”) (2nd edition, effective as from 1 January 2016).
5. The Horse was selected for testing during the Event on 8 October 2017. Blood samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory (the “Laboratory”) in Cambridgeshire, United Kingdom for analysis. The Horse’s samples were given reference number 5561216 (collectively, the “Sample”).
6. The Laboratory analysed the Horse’s A Sample and reported an adverse analytical finding for O-Desmethyltramadol.
7. O-Desmethyltramadol (ODMT) is a metabolite of Tramadol, an opioid analgesic commonly used in humans for the control of moderate to severe pain. Tramadol is classified as a Banned Substance under the 2017 FEI Equine Prohibited Substances List.
8. Tramadol is extensively metabolised in the human body and its metabolites, such as ODMT, are excreted primarily in the urine.
9. The estimated concentration of ODMT in the Horse’s Sample was 0.5 ng/mL.
10. By notification letter dated 9 November 2017, the Respondent informed the Appellant, in her capacity as the PR, and the SUI NF of a violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse’s Sample*) of the FEI Equine Anti-Doping Rules (the “EADRs”) based on the Laboratory’s adverse analytical finding of ODMT in the Horse’s Sample collected at the Event.

11. In accordance with Article 7.4 of the EADRs, the Respondent provisionally suspended the Appellant from all competitions as of 9 November 2017. The Horse was also provisionally suspended from 9 November 2017 until 22 December 2018 in accordance with Article 7.4.1 of the EADRs.
12. In the notification letter of 7 August 2019, the Appellant was informed of her right to request the Horse's B Sample to be analysed. The Appellant requested the B-sample analysis on 20 November 2017. On 9 January 2018, the Respondent notified the Appellant that the B-Sample confirmed the results of the A-Sample, namely, the presence of ODMT.
13. Following the Appellant's request for the lifting of the provisional suspension, the FEI Tribunal issued a first preliminary decision on 22 December 2017 maintaining the provisional suspension of the Appellant, as the requirements for the lifting of the provisional suspension, in accordance with 7.4.4 of the EADRs, had not been met. Moreover, the FEI Tribunal decided to lift the provisional suspension of the Horse.
14. In the second preliminary decision issued by the FEI Tribunal on 8 August 2018, the Provisional Suspension of the Appellant was lifted due to exceptional circumstances and the probability of the source of the adverse analytical finding to be caused by contamination. The Appellant had at that time been provisionally suspended for nine (9) months.
15. The FEI Tribunal rendered the final decision on the merits of the case on 24 February 2020 (the "Appealed Decision") and sanctioned the Appellant with a period of ineligibility of two (2) years, a fine of CHF 7'500 and legal cost of CHF 2'000. The FEI Tribunal concluded that the Appellant had failed to establish the source of the positive finding.
16. The imposed period of ineligibility expires on 23 May 2021, taking into account the already served provisional suspension.
17. The Horse and PR combination was disqualified from the Event.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 16 March 2020, the Appellant filed her Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "CAS Code"). In her Statement of Appeal, the Appellant nominated Mr Alexis Schoeb, Attorney-at-law in Geneva, Switzerland, as arbitrator and requested an extension of her deadline to file the Appeal Brief until 6 April 2020.
19. On 3 April 2020, the Appellant requested a further extension of her deadline to file the Appeal Brief until 27 April 2020 considering the Parties' out-of-court settlement discussions.

20. On the same date, the Respondent nominated Ms Janie Soublière, Attorney-at-law in Beaconsfield, Canada, as arbitrator.
21. On 6 April 2020, in view of the Parties' agreement, the CAS Court Office granted the Appellant's further request for extension of the deadline to file her Appeal Brief.
22. On 30 April 2020, the Appellant requested a further extension of time to file her Appeal Brief until 15 May 2020 due to the Parties' ongoing negotiation of an amicable settlement of the present proceedings.
23. On the same date, and in view of the Parties' agreement, the CAS Court Office granted the Appellant's third request for extension of the deadline to file her Appeal Brief.
24. On 15 May 2020, the Appellant informed the CAS Court Office that the Parties "*are in their final phase of their Settlement negotiation but need a few more days for the finalization of the respective document.*" In the same letter, the Appellant requested a one-week further extension of the deadline to file her Appeal Brief.
25. On the same date, and in view of the Parties' agreement, the CAS Court Office granted the Appellant's one-week request for extension of the deadline to file her Appeal Brief.
26. On 20 May 2020, in view of the Appellant's request and the Parties' agreement, the CAS Court Office granted the Appellant an additional 10-day extension of the deadline to file her Appeal Brief.
27. On 29 May 2020, the Appellant informed the CAS Court Office that the Parties i) "*have agreed on the cornerstones of a settlement agreement, but it needs to be finalized and signed. We expect that this can be achieved until middle or end of next week.*" and ii) request to stay the present proceedings until further notification.
28. On 2 June 2020, in view of the Parties' mutual agreement, the CAS Court Office informed the Parties that the present procedure would be suspended as from 29 May 2020 until further notice.
29. On 16 June 2020, the Respondent submitted the Parties' signed settlement agreement (the "Settlement Agreement") requesting that its terms are embodied in a CAS Consent Award issued by a Sole Arbitrator. The Respondent further informed the CAS Court that the Parties agreed i) "*on the Chairman to be sole arbitrator for this case*" and ii) "*that the suspension of the Athlete shall be lifted with immediate effect once the CAS has issued the consent award.*"
30. On 17 June 2020, the CAS Court Office duly noted the Parties' requests of 16 June 2020 and confirmed that the Sole Arbitrator would proceed to render a Consent Award as soon as possible.

31. On 18 June 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr Jacques Radoux as Sole Arbitrator.

IV. JURISDICTION

32. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-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 it prior to the appeal, in accordance with the statutes or regulations of that body.[...]”

33. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article 12 of the FEI EAD Rules as follows:

12.1: “Decisions made under these EAD Rules may be appealed as set forth below in Article 12.2 through 12.3. Such Decisions shall remain in effect while under appeal unless the appellate body orders otherwise.”

(...)

34. The Sole Arbitrator does not dispute the Settlement Agreement and confirms that the CAS has jurisdiction to issue this Consent Award.

V. ADMISSIBILITY

35. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]”

36. Article 12.3 of the EADRs provides that *“the time to file an appeal to CAS shall be twenty-one (21) days from the date of Receipt of the Hearing Panel Decision by the appealing party. [...]”*

37. The Appealed Decision was notified to the Appellant on 25 February 2020. The Statement of Appeal was timely filed on 16 March 2020, i.e. within the deadline set out in Article 12.3 of the EADRs and Article R49 of the CAS Code.

38. The Respondent has not otherwise objected to the admissibility of this appeal.

39. The Sole Arbitrator, therefore, confirms that this appeal is admissible.

VI. THE SETTLEMENT AGREEMENT

40. On 12 and 15 June 2020, the respective Parties have signed a Settlement Agreement based on new evidence, by which the FEI accepted that the Appellant bears no fault or negligence of the violation of the FEI EAD Rules. Such Settlement Agreement has been voluntarily submitted by the Parties to the Sole Arbitrator, and has been confirmed to represent their agreement containing a complete, comprehensive, and final resolution of their dispute, states, in pertinent part, as follows:

“

***SETTLEMENT AGREEMENT BETWEEN PARTIES
TO BE INCORPORATED IN A CONSENT AWARD***

[...]

2 THE FULL REASONING OF THE CASE

2A. How the substance entered the body of the Horse

- 2.1 *Upon initial investigation, the Appellant had submitted two potential sources of O-Desmethyltramadol (ODMT): human to horse transmission through sweat at the prize giving ceremony where a person held the Horse and allegedly transmitted Tramadol to the Horse; and Moroccan water contaminated with Tramadol. The Respondent consulted its pharmacological expert to verify the scientific plausibility of the provided potential sources, who concluded that which scientifically such explanations could have been possible, but there was no sufficient evidence of a link to the suspected potential source of Tramadol (i.e. no person taking Tramadol nor the water containing Tramadol). The lack of sufficient evidence resulted in the exclusion of both of them, as they were deemed not likely to have caused the adverse analytical finding.*
- 2.2 *The Appellant undertook extensive research and continued with further investigations of the possible source of the adverse analytical finding, also at the time of this Appeal.*
- 2.3 *Already in the initial phase of the investigation the Appellant checked if any of the persons working closely to the Horse might have taken or are taking Tramadol which could have resulted in human to horse transmission of the medication. No such person was found. At*

the time of the Appeal the Appellant once more discussed the issue at stake in detail with the family and her staff.

- 2.4 *Through such further discussion an identified member of the Appellant's staff, (the Support Person) ultimately confessed taking Tramadol pills to relief his back pain after the drive of the horses from Europe to Morocco. This Support Person has worked with the PR on several occasions since 2016. The Appellant knows him well and trusts him.*
- 2.5 *The Support Person confessed that he urinated in the in the compartment of the horse lorry where the horses were located. In addition, he could not exclude that he might have urinated also in the vicinity of the stables on the following days, however he cannot remember with certainty.*
- 2.6 *The Appellant explained that the Support Person, initially did not realise that his conduct could have caused the adverse analytical finding. Moreover he was concerned that his professional reputation would be ruined and as a consequence that he could be fired. For these reasons he did not mention his conduct immediately during their first discussion on how the Tramadol medication could have ended up in the Horse's system. Once he realised that his intake of Tramadol pills at the arrival in Morocco and his urination could actually have caused the adverse analytical finding he confessed directly. Today, 2.5 years later, it is difficult to recall the exact details of the incident but the Support Person now accepts that his actions must be the source of the adverse analytical finding.*
- 2.7 *The Horse is travelling untied in the lorry, which gives it more flexibility as to the movement and balance during travel. At arrival in Tétouan the boxes in the stables were not ready, and the team had to wait for over 2 hours before they could move the horses into the boxes at the competition. In the meantime, the Horse was feed and watered inside the horse lorry, while being untied. Once the stables were ready the left over hay was moved from the lorry to the Horse's box. This means that the contaminated hay was accessible to the Horse over an extended period of time and it is therefore possible that the Horse had ingested such contaminated hay that could lead to the positive finding.*

- 2.8 *In addition, the Horse had been tested on several occasions at international competitions over the years. In fact, the Horse tested negative at the event taking place the week after the Event in question.*
- 2.9 *The Respondent consulted with its external scientific expert on the plausibility of this explanation. He confirmed that it is plausible that the intake of 2 pills of Tramadol of 50-100 mg by the Support Person on 3 October 2017, and later the urination in the horse lorry the very same day, could lead to a positive finding of 0.5 ng/mL in the Horse's blood sample of 8 October 2017 through contaminated hay.*
- 2.10 *The Appellant eliminated through her thorough investigation the possibility for the positive finding of O-Desmethyltramadol to be originating from any other source than the contamination caused by the urination by the Support Person.*
- 2.11 *The Respondent is therefore satisfied that the Appellant established, on a balance of probabilities, how O-Desmethyltramadol entered the Horse's system, namely through ingestion of contaminated hay after the Support Person's urination following his intake of Tramadol pills.*

2B. Fault and Negligence for the rule violation

- 2.12 *The Appellant is a professional rider and has been a member of the Swiss national team for the last four years. She has been registered with the FEI since 2006 and has competed in 1422 international competitions. Her horses are stabled at a high performing equestrian stable with professional stable management enabling good procedures and high standard of care for each and every horse at the stables. By being on the Swiss national team on several occasions, the Appellant is also well acquainted with the equine anti-doping rules.*
- 2.13 *The Appellant explained that horses' welfare is the most important to her, and that she has never in her career incurred in any kind of doping violation or otherwise done anything that was not in the horses' best interest.*

2.14 *The Appellant has provided statements where she explained her daily procedures that were put in place to prevent contamination and positive cases at home and at the competitions such as: :*

- *The Appellant tries to keep her horses healthy through maximal care. If a horse is not fit, it does not compete, and work is reduced until the horse is fit again.*
- *Medical treatments of her horses is therefore rare, and the Horse has only been treated twice in 2017.*
- *The Appellant herself does not administer any medication to her horses and only a veterinarian is allowed to treat the horses should need be.*
- *The stable buys feed from reputable sources, and the Horse is only fed basic hard feed and hay.*
- *The use of supplements is limited to only one supplement which is used exclusively during competitions and by many professional riders on international level.*
- *The Appellant has a well selected professional team around her horses. Only members of her team are allowed to handle her horses on a daily basis, and the horses are not handled by anyone else.*
- *At competitions the Appellant is careful about the cleanliness of the stables and only feed/water from their own cleaned plastic buckets.*

2.15 *Any Person who is in the PR's a Support Personnel should be aware of the risk of human to horse cross contamination through urination in the vicinity of the horses. The identified Support Person was not educated of the specific risk of such cross contamination. On the other hand it would have been difficult for the Appellant to expect that this identified Support Person would urinate in the vicinity of the Horse or in any other way cause a positive finding as his tasks does not involve any handling of the horses. In addition, the Appellant had no reason to suspect that, the Support Person was on medication and that it ultimately would lead to the presence of prohibited substances in the Horse.*

2.16 *In consequence, the Respondent is satisfied that the Appellant has established that she bears No Fault or Negligence for the Rule Violation in accordance with Art 10.4 of the EADR.*

2.17 *The Parties therefore agree that the sanction of two (2) years Period of Ineligibility as imposed by the FEI Tribunal in the Decision subject for this Appeal, shall be eliminated.*

3 NOW, THEREFORE, THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS BEFORE CAS:

3.1 *The parties conclude that the criteria for the application of Article 10.4 of the EAD Rules has been met and that the Appellant has established:*

- (a) *on a balance of probabilities, a plausible explanation of how the O-Desmethyltramadol entered the Horse's system;*
- (b) *that the Appellant did not know or suspect, and could not reasonably have known or suspected that the Support Personnel used a Tramadol medication and urinated in the horse lorry, that led to the positive finding of a Banned Substance in the Horse;*
- (c) *in consequence the Respondent is satisfied that the Appellant established that she bore No Fault or Negligence for the Rule Violation.*

3.2 *The Parties therefore request the CAS to set aside the Decision of the FEI Tribunal of 24 February 2020 and insert this settlement agreement in a consent award:*

- (a) *The Appellant admits the violation of Article 2.1 of the EAD Rules (The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample);*
- (b) *The Appellant established on a balance of probabilities how the O-Desmethyltramadol entered the Horse's system;*
- (c) *The Appellant bears No Fault or Negligence for the Rule Violation and therefore she shall not serve any further period of ineligibility and the already imposed Period of Ineligibility (i.e. two years) shall be eliminated;*

- (d) *In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules;*
 - (e) *For the avoidance of doubt, the Parties confirm that the Horse and the PR combination shall remain disqualified from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules;*
 - (f) *The Appellant shall not incur any fines, the initial fine imposed by the FEI Tribunal will be reimbursed by the FEI;*
 - (g) *The contribution to the legal costs of 2 000 CHF as imposed by the FEI Tribunal shall remain and has already be paid by the Appellant;*
 - (h) *Each party shall bear its own costs for any other costs incurred in connection with the FEI Tribunal proceedings;*
 - (i) *Each party shall bear its own costs related to the CAS Appeal and the conclusion of this Agreement;*
 - (j) *Any procedural costs of the CAS shall be borne by the Appellant;*
 - (k) *The Appellant shall bear the cost of the B-sample analysis, and has already been paid by the Appellant;*
 - (l) *No other Sanctions will apply in this case.*
- 3.3 *The Parties kindly request the CAS to terminate the proceedings CAS 2020/A/6853 by a consent award in accordance with Art R56 of the CAS code.*
- 3.4 *The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the CAS and FEI.*
- 3.5 *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.

- 3.6 *Any dispute arising from or related to the present Settlement Agreement will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.”*

(the “Settlement Agreement”)

VII. RATIFICATION AND INCORPORATION OF THE SETTLEMENT AGREEMENT BY THE CAS

41. In accordance with Article R65, para. 2, second sentence, of the CAS Code “[a]ny settlement may be embodied in an arbitral award rendered by consent of the parties.”
42. Therefore, the Sole Arbitrator is expressly allowed to issue an Award embodying the terms of the Settlement Agreement, if all Parties to the dispute agree. The Sole Arbitrator’s endorsement of the Settlement Agreement and incorporation in an Award is designed to facilitate the Parties’ enforcement of the Settlement Agreement.
43. Under Swiss law, an arbitration tribunal sitting in Switzerland may issue an award embodying the terms of the parties’ settlement, if the contesting parties agree to such a termination of their dispute. The Sole Arbitrator’s ratification of the Settlement Agreement and its incorporation into this Consent Award is designed to vest the Settlement Agreement with a *res judicata* effect and to enable its enforcement.
44. All the Parties to the present dispute have agreed to embody part of the Settlement Agreement in a Consent Award. However, the Sole Arbitrator must verify the *bona fide* nature of the Settlement Agreement to ensure that the Parties are not manipulating the consent award mechanism as an instrument of fraud, and that settlement terms are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
45. The Sole Arbitrator has carefully considered the Settlement Agreement and its terms as well as the evidence on file, and finds no grounds to object to the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention.
46. Accordingly, by consent, an Award is made directing the Parties to comply with all the terms of the Settlement Agreement.

47. The Settlement Agreement and Consent Award thus terminate the CAS arbitration number *CAS 2020/A/6853 Nadja Peter Steiner v. Fédération Equestre Internationale (FEI)*.
48. The above conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other motions or prayers for relief are rejected.

VIII. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Sole Arbitrator, with the consent of Ms Nadja Peter Steiner and the Fédération Equestre Internationale (FEI) hereby ratifies the Settlement Agreement signed by Ms Nadja Peter Steiner on 12 June 2020 and by the Fédération Equestre Internationale (FEI) on 15 June 2020, and incorporates its terms into this Consent Award.
2. The Decision rendered by the FEI Tribunal on 24 February 2020 is set aside.
3. Each Party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 18 June 2020

THE COURT OF ARBITRATION FOR SPORT

Jacques Radoux
Sole Arbitrator