CAS 2024/A/10675 Agusti Elias Lara v. Fédération Equestre Internationale (FEI)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Prof. Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-Law and Barrister, London, United Kingdom
Mr Bernhard Welten, Attorney-at-Law, Bern, Switzerland

between

AGUSTI ELIAS LARA, Barcelona, Spain

Represented by Mr Piotr Wawrzyniak, Attorney-at-Law, Schelstraete c.s. Advocaten B.V., LT 's-Hertogenbosch, The Netherlands

Appellant

and

FÉDÉRATION EQUESTRE INTERNATIONALE (FEI), Lausanne, Switzerland

Represented by Ms Katarzyna Jozwik and Ms Ana Kricej, FEI Legal Counsel, Lausanne, Switzerland

Respondent

I. THE PARTIES

1. Mr Agusti Juan Elias Lara (the "Athlete" or the "Appellant") is a rider of Spanish nationality born on 13 December 1975. The Athlete has been registered with the National Equestrian Federation of Spain (the "ESP-NF") since 2006 and has extensive experience, having participated in approximately 106 international competitions in the discipline of dressage since his first registration. The Athlete competed with the horse Altaneiro at the CDIO5*-NC in Compiègne (FRA) from 19 to 22 May 2022 ("Event 1") and at the CDI4* in Fritzens-Schindlhof (AUT) from 8 to 10 July 2022 ("Event 2").

2. The Fédération Equestre Internationale ("FEI" or the "Respondent") is the International Olympic Committee- and International Paralympic Committee-recognized governing body for the equestrian sport disciplines of dressage and para-equestrian dressage, jumping, eventing, driving and para-driving, endurance and vaulting. The FEI is a signatory of the World Anti-Doping Code (the "WADC"), the core document established by the World Anti-Doping Agency ("WADA"), that harmonizes anti-doping policies, rules and regulations around the world. The Anti-Doping Rules for Human Athletes ("ADRHA") have been adopted to implement the FEI's responsibilities under the WADC.

3. The Appellant and the Respondent together are referred to as the "Parties".

II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 21 May 2022, a urine sample was taken from the Athlete at the Event 1 for testing under the ADRHA ("Sample 1"). In the relevant Doping Control Form ("DCF") the Athlete indicated that he had taken "*no medicaments, no supplements, no vitamins*". Sample 1 was divided into an A-Sample 1 and a B-Sample 1 and sent to a WADA accredited laboratory, the Laboratoire Anti-Dopage Français of Châtenay-Malabry France (the "Laboratory"), for analysis.

6. On 10 June 2022, the Laboratory reported an analytical atypical finding (the "First ATF") for the presence in the A-Sample 1 of Clenbuterol, with the estimated concentration level of 1.5 ng/mL. Clenbuterol (the "Prohibited Substance") is included in class S1.2 "Other Anabolic Agents" of the 2022 Prohibited List established by WADA, as a Non-Specified Substance prohibited in- and out-of-competition.

7. In a letter dated 20 June 2022, the Laboratory confirmed to FEI the "indicative estimates

for the concentration" of the Prohibited Substance in the A-Sample 1 at "approximately" 1.5 ng/mL, underlining that:

i. since the Prohibited Substance is a "Non-Threshold Substance", there was no requirement for the Laboratory to quantify its concentration;

ii. the Laboratory applied "*a method that was developed for qualitative purposes*" and therefore "*other than having established that the mentioned substance is present in the sample at a concentration above the method's limit of detection, assignment of the absolute concentration of the analyte in the sample falls outside the intended purpose*";

iii. "*the indicative estimation of the concentration [was] provided for information purposes only*" and "*was obtained by comparison of the response of the sample with the response of a positive quality control sample… or an internal standard*".

8. On 8 July 2022, a second urine sample was taken from the Athlete at the Event 2 for testing under the ADRHA ("Sample 2"). No indication was inserted in the DCF with respect to the use of medications. Sample 2 was also divided into an A-Sample 2 and a B-Sample 2 and sent to the Laboratory for analysis.

9. On 3 August 2022, the Laboratory analysed the A-Sample 2 and similarly reported an analytical atypical finding (the "Second ATF") for the presence of Clenbuterol, with the estimated concentration level of 0.04 ng/mL.

10. On 17 August 2022, the Laboratory confirmed in a letter to the FEI the same information regarding the nature of the determination of the indicative estimated concentration reported for the A-Sample 2 as those contained in the letter of 20 June 2022 with respect to A-Sample 1.

11. On 22 August 2022, the Athlete was notified of the First ATF and of the Second ATF (the "ATFs") through a letter (the "First Notification Letter") stating, amongst others, that:

i. a presence of Clenbuterol had been detected in Sample 1 and in Sample 2 (the Samples") at the respective concentrations of 1.5 ng/mL and 0.04 ng/mL;

ii. the presence of Clenbuterol, detected in the Samples at an estimated concentration below 5 ng/mL, had been reported by the Laboratory as ATFs;

iii. Clenbuterol may be used in certain countries as growth promoter for livestock and therefore may be associated with findings resulting from the consumption of contaminated meat;

iv. further investigation was required in order to determine whether any evidence existed to establish that meat contamination was more likely than not to be the source of the ATFs. If such evidence existed, the FEI would not take any further action in respect of them. However, if such evidence did not exist, the FEI would have to pursue the ATFs as an adverse analytical finding ("AAF") and the normal results management process would apply;

v. the Athlete was invited to provide certain information related to his travel, dietary habits and the possibility of meat contamination as the source of the ATFs.

12. On 29 August 2022, the Athlete responded to the FEI, stressing that he had never taken "*any kind of substance concisely with clenbuterol*", and provided details and documents as to his dietary habits and travel in the period from December 2021 to July 2022.

13. On 1 September 2022, the FEI in a letter to the Athlete (the "Second Notification Letter") notified him of an alleged AAF under Article 2.1 of the ADRHA ("*Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*") and/or Article 2.2 of the ADRHA ("*Use of a Prohibited Substance*"). At the same time, the Athlete was informed that he was provisionally suspended as of that notification and that he had an opportunity to request the analysis of the B-Sample 1 and of the B-Sample 2 (the "B-Samples") and to provide an explanation regarding the alleged AAF. In the Second Notification Letter, in fact, the FEI noted that it had reviewed the information provided by the Athlete following the First Notification Letter and that it had come to the conclusion that it was improbable that the ingestion of meat was the source of the ATFs.

14. The Athlete did not request the B-Samples analyses. However, on 19 September 2022, the Athlete sent a letter to FEI reading as follows:

"*… Talking with my Vet about the case, he pointed out and remarked that maybe one of the medications we treat one of my horses with, might contain clenbuterol. Once confirmed and in view of that, I consulted with my Doctor about the possibility that the administration of this medication could have contaminated me. This doctor has full information about the food supplements and medication that I have been taken during the last months and then he recommended me to contact a Doctor judicial-expert, Dr. Florencio Valle Cardosa, who could carry out an expert study to determinate the possible cause of contamination. Beside the information given by my doctor, the certificate issued by my Vet with the medication administered to my horse Silvio was also delivered to Dr. Valle, who concluded that the contamination was not caused by meat or medications taken, but that in all probability it would have been due to the manipulation of the medication administered to my horse (attached is Dr. Valle's expert study, the Vet's certificate as Doc. 1 and the summary of product features issued by the Department of Veterinary Medicinal Products, of the Spanish Government as Doc. 2, and the official translations into English excepted the Vet certificate that was directly written in English).*

I want to remark my absolute lack of intention, as I even didn't know (because I wasn't warned) that the medication of my horse contained a certain quantity of clenbuterol that could contaminate me if I didn't use mask when administrating it. I began to give the medication when my horse Silvio was in my stable and, due to the fact that I planned to travel to The Netherlands to prepare the international competitions in which I was going to take part, I took the horse with me to avoid the hot and dusty seasons in Spain, and facilitate his recuperation. So when I was there, it was me who frequently gave him his medication.

ADRHA Article 10.2 settles that the FEI has to be able to establish that the antidoping rule violation was intentional for the application of the period of Ineligibility and Article 10.5 establishes that a reduction of the period of Ineligibility can be accorded based on Non-Significant Fault or Negligence. In that case the period of Ineligibility can be, at a minimum, a reprimand and no period of Ineligibility, and taking into account the very small values found in my samples, that have had any effect on sport's performance, this must be considered when deciding my case. Of course, now that I know the possibility of contamination I will be extremely careful in the future with all the medications."

15. Attached to such letter the Athlete transmitted to the FEI:

    i. a certificate dated 15 September 2022, signed by Mr Claudio Nomen LMV of Equihealth Veterinarios, S.L., indicating that:

    "Horse SILVIO, owned by Agusti Elias Lara has been through a long period of low level bouts of respiratory problems and cough associated to dusty situations since October 2021. Those were treated with oral Prednisolone, intramuscular Dexamethasone and short repeated periods of Spasmobronchal 0,016 mg oral powder. The owner of the horse administered himself the daily doses the oral Spasmobrochal powder added to the food when necessary, specially when the horse was moved to Holland, where he stayed for some time to assure his earlier recuperation";

    ii. a document summarizing the features of "*Spasmobronchal 0.016 mg/g granules for horses*" ("Spasmobronchal" or the "Product"), showing that its active substance is Clenbuterol;

    iii. an expert medical report dated 19 September 2022, signed by Dr Florencio Valle Cardosa, concluding that:

    "For all the above, I do consider the handling of this medicinal product: Spasmobronchal 0.016 mg g. Granules, to be highly suspicious, as responsible for the traces of Clenbuterol found in his analyses, dated 21 May and 8 July 2022. Traces after inhalation of the substance can be detected (according to the explained half-life) for days or weeks. Furthermore, it is likely that if other random analyses had been carried out, these traces would have continued to appear (to a greater or lesser extent), as he has been handling this medicinal product since at least October 2021."

16. On 22 September 2022, the FEI replied to the Athlete's communication of 19 September 2022 that, in order to allow external expert verification of the scientific explanations provided, the Athlete needed to submit a statement from the veterinarian indicating the "*period during which Spasmobronchal medication was administered to the horse*" and the "*dosage of the medication and how many times daily it was administered to the horse*".

17. On 26 September 2022, the Athlete transmitted to the FEI an additional report signed by Mr Claudio Nomen LMV, stating that:

"*This is to inform we indicated treatment with Spasmobronchal 0,016 mg oral powder*

at dose of 20 gm of product (0.8 micrograms/Kg clembuterol) twice a day, for periods of ten days when needed, to the horse SILVIO owned by Agustí Elias Lara. First treatment was started at home in Poliny (Spain) from October 18th to October 28th of 2021. Horse was moved out to Holland to stay during 2022 with our indication that treatment could be repeated in case of recurrence of symptoms once there. As far as we know, the horse had several relapses in Holland that have been treated there following the prescribed indications."

18. On 26 September 2022, an exchange of email messages between the Parties took place, which included the following:

    i. at 11:46, the FEI confirmed the receipt of the additional veterinarian's statement and asked the Athlete to specify the period (with exact dates) during which Spasmobronchal was administrated to the horse in Holland in 2022;

    ii. at 14:13, the Athlete answered that the first treatment with Spasmobronchal was administrated from May 10 to 20 and he dealt with it personally until 17 May, when he left; and that the second treatment from June 19 to 29 was administrated personally by him "*since I arrived until June 29*";

    iii. at 15:56, the FEI requested some additional clarification about the starting date of the second treatment and the exact date in which the Athlete arrived;

    iv. at 17:49, the Athlete replied that "*the treatment started 19 of June with my groom and I continued myself the last 3 days when I arrived to Netherlands 27/28/29 of June*".

19. On 31 January 2023, the FEI formally charged the Athlete with a violation of Article 2.1 of ADRHA (the "Notice of Charge"). The Notice of Charge had attached an opinion issued on 25 January 2023 by Prof. Jerome Biollaz and Prof. Thierry Buclin of the Centre Hospitalier Universitaire Vaudois (CHUV) (the "CHUV Report"), concluding that, "*despite the imprecision linked to the limits of the measurement method […] as well as to the approach by extrapolation in return of the inhaled/ingested dose from urinary excretion, we consider the hypothesis of accidental airborne contamination during preparation and administration of the drug to the horse as highly improbable*". As a result, the FEI indicated in the Notice of Charge that, "*based on the scientific data provided in the independent expert report, the FEI excludes the possibility that this Spasmobronchal manipulation caused the Adverse Analytical Finding (the AAF) to Clenbuterol in your samples and submits that the AAF in your samples must have been caused by another Clenbuterol intake or exposure*". At the same time, the FEI informed the Athlete of the options available to him in response to the Notice of Charge.

20. On 2 June 2023, the Athlete, by counsel, answered the Notice of Charge, concluding as follows:

    "… *Mr ELIAS respectfully requests the FEI rule that he has clearly demonstrated the circumstances by which Clenbuterol entered his system. He has also established that it was not his goal to enhance his performance in the competition but rather to do everything necessary for his Horse's welfare.*

… Mr ELIAS respectfully submits that Mr ELIAS has been provisionally suspended for almost 9 months and should the FEI decide to impose a sanction that it be no greater than twelve months. At the same time, Mr ELIAS is convinced that he has furnished evidence and circumstances showing that he bears no significant fault and no significant negligence for the rule violation, and that any sanction imposed should be reduced by one-half."

21. The Athlete's submission of 2 June 2023 had attached:

    i. a witness statement dated 13 April 2023, signed by the Athlete himself;

    ii. a report dated 23 May 2023 and signed by Dr Emmanuel Strahm, an independent scientific expert from Lausanne, Switzerland (the "Strahm Report"), concluding that, "*if the question is to know whether the presence of clenbuterol in the athlete's urine could be explained by an external contamination by manual processing of Spasmobronchal, I would say yes, it could. And therefore, the explanation given by the athlete is acceptable*";

    iii. the Product's information in Dutch and its translation in English.

22. On 30 August 2023, an additional report was issued by Prof. Jerome Biollaz and Prof. Thierry Buclin (the "Additional CHUV Report") addressing the objections raised in the Athlete's submission in the following terms:

    i. with respect to the contention that the CHUV Report used the "qualitative" estimations of Clenbuterol concentration in the Samples as if they were "quantitative" and therefore its conclusions are wrong, it is to be noted that the Laboratory mentioned that their "*assay method*" is designed for "semiquantitative purposes", meaning that it provides a rough estimate of the result's magnitude, though not with high precision. The calculations in the CHUV Report were based on these estimates, and while there is a margin of uncertainty, the order of magnitude is considered realistic. To challenge this interpretation, one would need to explain the presence of the Prohibited Substance four days after the Athlete's last exposure by means other than inhalation, or through subsequent exposure inconsistent with the Athlete's claims;

    ii. about the alleged "*cross-contamination through skin*", "*cross-contamination through eyes*", or "*ingestion of some particles of medication through mouth*", it has to be observed that the presence of the Prohibited Substance four days after the last ocular exposure makes cross-contamination through eye exposure unlikely, due to the Product's characteristics; the possibility of oral absorption from a smaller dose closer to the urine test is suggested, but this contradicts the Athlete's statements; and the contamination via skin contact is also considered unlikely, due to the low amount of Prohibited Substance in the Product. Significant absorption would require prolonged contact, which seems improbable.

23. On 28 November 2023, the FEI submitted the case to the FEI Tribunal and requested that a hearing panel be appointed to adjudicate the case.

24. On 17 January 2024, the Athlete provided his reply to the FEI Tribunal and requested that a hearing be held.

25. On 11 March 2024, a hearing took place before the FEI Tribunal.

26. On 4 June 2024 the FEI Tribunal issued a decision (the "Appealed Decision"), stating that:

"*a. Mr. Agusti ELIAS LARA has infringed Article 2.1 of the ADRHAs;*

b. Mr. Agusti ELIAS LARA shall be suspended for a period of four (4) years in line with Article 10.2.1.1 of the ADRHAs. The period of the ineligibility will be effective as from the day of notification of this decision, providing credit for the Provisional Suspension already served);

c. All results obtained by Mr. Agusti ELIAS LARA at the Events are disqualified, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to Articles 9 and 10.1 of the ADRHAs.;

d. All other competitive results obtained by Mr. Agusti ELIAS LARA from the date of the Sample 1 collection (i.e., 21 May 2022) are disqualified, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to Article 10.10 of the ADRHAs;

e. Mr. Agusti ELIAS LARA is ordered to pay a fine of five thousand Swiss Francs (CHF 5'000);

f. Mr. Agusti ELIAS LARA is ordered to pay three thousand Swiss Francs (CHF 3'000) as a contribution to the legal costs that the FEI has incurred in these proceedings."

27. In support of such findings, the FEI Tribunal observed the following:

i. as to whether the Athlete committed an anti-doping rule violation:

"*106. The Athlete's sample confirmed the presence of Clenbuterol which is a Non-Specified Substance according to the 2022 Prohibited List and is classified in Class S1.2 Other Anabolic Agents. It is prohibited at all times (In and Out-of-Competition).*

107. As set forth in Article 2.1 of the ADRHAs, sufficient proof of an ADRV is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample.

108. The Panel is satisfied that the reports relating to the A Samples reflects that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. Therefore, the Panel is satisfied that the test results evidence the presence of Clenbuterol taken from the Athlete at the Events.

109. In addition, despite being informed of his right to request the analysis of the B Sample, the Athlete decided not to request this.

110. The Panel also noted that the Athlete denied having consciously taken any

kind of Prohibited Substance or medication that might have contained Clenbuterol in his earliest submissions to the FEI. Nonetheless, the Panel reminds the Athlete that any ADRV is a strict liability offence, which means that an Athlete is responsible for any Prohibited Substances found in his system, regardless of how the Prohibited Substances entered his system.

111. As a result, in accordance with Article 2.1.2 of the ADRHAs, the Panel confirms that FEI has established that the Athlete committed an anti-doping rule violation";

ii. as to whether the Athlete committed the anti-doping rule violation intentionally:

"*112. The Panel notes that Article 10.2.1 of the ADRHAs provides that an athlete with no previous doping offences who violates Article 2.1 and whose violation involves a Non-Specified Substance is subject to a period of ineligibility of four years, unless the athlete can establish that the ADRV was not intentional (in which case the Ineligibility period shall be two years in accordance with Article 10.2.2 of the ADRHA, subject to potential reductions).*

113. Furthermore, in accordance with Article 10.2.3 of the ADRHAs, the term "intentional" is meant to identify those Athletes or other Persons who "engage in conduct which they knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk".

114. Taking the latter definition of the term "intentional" into account, the Panel refers to the comment addended to Article 10.2.1.1 of the ADRHAs, which provides "that while it is theoretically possible for an athlete or other person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an athlete will be successful in proving that the athlete acted unintentionally without establishing the source of the Prohibited Substance". Furthermore, the Panel accepts that CAS case law rarely departs from this principle and CAS panels require that, to conclude that an athlete did not act intentionally without the athlete having established the source of the AAF, certain precise and exceptional circumstances must exist.

115. In this regard, the Panel notes the jurisprudence in the case Mauricio Filo Villanueva v FINA15, wherein the CAS panel found that "the proof of source would be an important, even critical first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him". Additionally, in the case of WADA v SAIDS & Gordon Gilbert, the Sole Arbitrator observed that "it could be de facto difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because

intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion".

116. *In this case, the Panel considers that the Athlete has not discharged his burden to prove the lack of intention in committing the ADRV, as the source has not been sufficiently demonstrated.*

117. *The Athlete has presented several possible scenarios; however, the Panel finds that none of them surpass the 51% threshold required by the applicable regulations.*

118. *The Panel found that the CHUV Expert Report and the subsequent clarifications from Professors Buclin and Biollaz were not sufficiently rebutted by the Athlete nor his expert. The Panel finds that although it has been established that the scenarios of cross-contamination through skin, mouth or eyes is possible, it also finds that this cross-contamination is unlikely to have caused the concentrations of Clenbuterol found in the Samples at the time they were taken. Although the Panel agrees that the findings by the Laboratory are "qualitative" rather than "quantitative", the Panel does note that the Laboratory itself has pointed out that the concentration of the mentioned substance was obtained by comparison of the response of the Sample with the response of a positive quality control.*

119. *The Panel also notes that the Athlete confirmed that he took supplements around the time of the doping controls and because he understood that none of those supplements seemed to contain the Prohibited Substance Clenbuterol, he did not take any action to make detailed enquiries for information about such supplements.*

120. *As stated above, providing scenarios that are – in the Athlete's views – "possible", is not enough to establish the source of the Prohibited Substance in the concentrations found by the Laboratory. Moreover, absent the necessary factual and scientific evidence, the arguments concerning a clean career or lack of sporting incentive to use the Prohibited Substance are not sufficient to prove lack of intent.*

121. *The Panel finds that the Athlete has not provided sufficient evidence to convince the Panel, on a balance of probabilities, about the source of the Clenbuterol found in his Samples. In addition, he has not provided sufficient evidence that could allow for the exceptional scenario in which lack of intent is demonstrated without establishing the source. Such avenue would have required much more persuasive factual and scientific evidence as well as closing other possible doors.*

122. *Consequently, the Panel is satisfied that the Athlete did not establish the source of the Prohibited Substance nor prove the non-intentional nature of his violation: the critical first step in any exculpation of intent.*

123. *Since the Athlete was not successful in demonstrating the source of Clenbuterol in his Samples or the non-intentional character of his violations, the Panel will not assess the level of Fault or Negligence of the Athlete but does note that the Athlete is an experienced horseman and has*

worked as an assistant to his veterinarian yet claims not to have taken basic precautions when administering a substance to his horse";

iii. as to the sanctions:

"*124. As the Athlete has failed to discharge his burden of proving the source of the Prohibited Substance and that he acted without intent, the Panel is unable to depart from the default period of ineligibility of four (4) years established in Article 10.2.1.1. of the ADRHAs.*

125. In accordance with Article 7.4.1 of the ADRHAs, the Athlete was provisionally suspended as of 1 September 2022. Therefore, as established in Article 10.13.2.1 of the ADRHAs, the Athlete will receive credit for the period of Provisional Suspension already served against the imposed ineligibility period of four (4) years.

126. In addition, pursuant to Articles 9 and 10.1 of the ADRHAs, the Panel disqualifies all the results of the Athlete obtained in the Events, with the consequent forfeiture of all medals, points, prize money, etc. that he may have won.

127. All other competitive results obtained by the Athlete from the dates of the first sample collection (i.e., 21 May 2022) are also disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes pursuant to Article 10.10 of the ADRHAs.

128. Article 10.12 of the ADRHAs enables the Panel to impose, at its discretion and subject to the principle of proportionality, the following financial consequences on the Athlete:

(i) Have the FEI recover from the Athlete or other Person costs associated with the anti-doping rule violation; and/or

(ii) Fine the Athlete or other Person in an amount up to 15'000 Swiss Francs, and in accordance with the FEI Guidelines for Fines and Contributions towards Legal Costs.

129. In the present case, it was the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. Therefore, the Tribunal rules that a fine of CHF 5,000 is appropriate. In addition, given the complexities of this case that were aggravated by the changing explanations and scenarios offered by the Athlete, the Tribunal orders the Athlete to contribute to the FEI's costs in the amount of CHF 3,000. This amount is also in line with the FEI Guidelines for Fines and Contribution Towards Legal Costs".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 20 June 2024, the Athlete transmitted to the Court of Arbitration for Sport ("CAS") a Statement of Appeal, pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), to challenge the Appealed Decision. The Statement of Appeal contained, *inter alia*, the appointment of Mr Jeffrey G. Benz, Attorney-at-Law and

Barrister in London, United Kingdom, as an arbitrator.

29. On 1 July 2024, the FEI nominated Ms Raphaëlle Favre-Schnyder, Attorney-at-Law in Zurich, Switzerland, as an arbitrator in this matter.

30. On 4 July 2024, the Appellant filed with the CAS Court Office his Appeal Brief pursuant to Article R51 of the CAS Code. The Appeal Brief had attached, *inter alia*, the Strahm Report as well as a declaration signed by Dr Marc Oertly, PhD, team veterinarian of the Swiss Olympic team, and contained the request that Dr Strahm and Dr Oertly be heard at the hearing.

31. On 10 July 2024, the Parties were informed that Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy, had been appointed as President of the Panel and that, together with his acceptance, he had provided a disclosure.

32. On 23 July 2024, the Respondent filed with the CAS Court Office its Answer pursuant to Article R55 of the CAS Code.

33. On 23 July 2024, the CAS Court Office invited the Parties to express a preference as to the holding of a hearing or whether they wished the Panel to decide on the basis of their written submission.

34. On 25 July 2024, the Respondent informed the CAS Court Office "*that the FEI does not think that it is necessary to hold a hearing in this case and that it can be decided based on the Parties' written submissions. Nevertheless, the FEI does not object to holding a hearing if the Appellant wishes so. If the hearing is held in this matter, the FEl wishes to call Professor Thierry Buclin and/or Professor Jérôme Biollaz (depending on their availability on the day of the hearing) as already advised in the FEl Answer*."

35. On 25 July 2025, the Appellant wrote a message to the CAS Court Office:

> *"… to formally request the scheduling of a public hearing for the disciplinary matter referenced in the appeal brief. The Appellant requests a physical hearing be held before the CAS.*
>
> *Additionally, as stated in the appeal brief, the Appellant wishes to call Dr. Emmanuel Strahm as a witness. (…)*"

36. On 29 July 2024, the CAS Court Office noted that no challenge had been filed against the appointment of Prof. Fumagalli and informed the Parties, under Article R54 of the CAS Code, that the Panel to hear the case had been appointed as follows:

> President: Prof. Luigi Fumagalli
>
> Arbitrators: Mr Jeffrey G. Benz and Ms Raphaëlle Favre-Schnyder.

37. On 12 September 2024, following extensive consultation with the Parties, the CAS Court Office informed them that the Panel would be available to hold the hearing on 7 October 2024.

38. On 17 September 2024, the CAS Court Office confirmed that the hearing would be held on 7 October 2024 at the CAS Court Office in Lausanne, Switzerland.

39. On 24 September 2024, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure"), which was signed by the Appellant on 27 September 2024 and by the Respondent on 26 September 2024.

40. On 30 September 2024, the CAS Court Office informed the Parties of a disclosure made by a member of the Panel, Ms Raphaëlle Favre-Schnyder, of a circumstance that in her opinion did not affect her independence and impartiality.

41. On the same date, the Appellant filed a petition for the challenge of Ms Raphaëlle Favre-Schnyder, requesting her replacement with another arbitrator, while still confirming that the hearing should proceed on the scheduled date.

42. On 2 October 2024, the Parties were informed by the CAS Court Office of an additional declaration made by Ms Raphaëlle Favre-Schnyder, regarding the disclosed circumstance, as well as of Ms Raphaëlle Favre-Schnyder's indication that "s*hould the Appellant decide to uphold his challenge despite this supplementary information, in the interest of the proceedings only and under the condition that the Respondent nominate a new arbitrator in time for the hearing to take place on 7 October 2024, I would then withdraw from the Panel*".

43. On 3 October 2024, the Appellant confirmed to the CAS Court Office that it maintained the challenge of Ms Raphaëlle Favre-Schnyder. As a result, on the same date, the Respondent nominated Mr Bernhard Welten, Attorney-at-Law in Bern, Switzerland, as an arbitrator to replace Ms Raphaëlle Favre-Schnyder, and the CAS Court Office, on behalf of the President of the CAS Appeal Arbitration Division, informed the Parties that the Panel to hear the dispute had been reconstituted as follows:

President: Prof. Luigi Fumagalli

Arbitrators: Mr Jeffrey G. Benz and Mr Bernhard Welten.

44. On 7 October 2024, a hearing was held in Lausanne. However, with the agreement of the Parties, a member of the Panel, Mr Bernhard Welten, attended by video connection. In addition to the Panel and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:

for the Appellant: the Athlete personally, assisted by Mr Piotr Wawrzyniak and Prof. Zachary R. Calo, counsel;

for the Respondent: Ms Katarzyna Jozwik and Ms Ana Kricej, counsel.

45. At the beginning of the hearing, the Parties confirmed that they had no objection to the composition of the Panel. The Panel then, after opening statements by counsel, heard declarations of the Athlete, of Dr Oertly, of Dr Strahm and Prof. Buclin. In that context, and *inter alia*:

i. the Athlete explained the circumstances of his administration of the Product to the horse, based on the prescription of the veterinarian, that he did not wear gloves and that he had never declared to anybody that he used gloves. He also referred to the fact that in the period of Event 1 and Event 2 (the "Events") he was about to become a member of the Spanish Olympic team;

ii. Dr Oertly, heard by video connection, confirmed that the barn is a rather dusty place, that the Product is commonly used to treat horses and that it is not unusual not to wear any protection while administering the Product;

iii. Dr Strahm repeated his criticisms of the CHUV Report and underlined that the margin of "uncertainty" can be very wide, but was not estimated by the Laboratory while performing a qualitative analysis. In that situation in the absence of additional information, no evaluation can be made on the basis of the reported estimations made by the Laboratory. As a result, in Dr Strahm's opinion, the absorption of the Prohibited Substance through a concurrent mix of routes is consistent with the AAFs, if the estimates are adjusted to an actual lower level;

iv. Prof. Buclin stressed that the explanations given by the Athlete regarding the rout of ingestion are highly unlikely, and that the estimations of concentration provided by the Laboratory are roughly correct. However, he admitted that a (much) lower concentrations would be consistent with the justifications of the AAFs offered by the Athlete.

46. The Parties were finally invited to submit their pleadings. In that context, the Parties answered questions asked by the Panel and insisted for the granting of the relief respectively sought.

47. 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.

IV. THE POSITION OF THE PARTIES

48. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

49. In his Statement of Appeal, the Appellant requested the CAS to issue an award to:

"*a) set aside the Decision;*
b) eliminate or otherwise reduce the suspension imposed on the Appellant; and
c) order the Respondent to:
i. reimburse the Appellant their legal costs and other expenses pertaining to this appeal; and

ii. bear the costs of the arbitration (if any)."

50. In the Appeal Brief, then, the Athlete specified his requests for relief, as follows:

"*a) Set aside the FEI Tribunal Decision and the FEI Decision and rule on the matter de novo;*

b) Find that no sanction or period of ineligibility shall be imposed on the Appellant. In the alternative, should the Panel find Appellant had any level of fault or negligence, to impose the minimum applicable period of ineligibility (one year) and to grant Appellant credit for the period of ineligibility already served (a period commencing 1 September 2022).

c) Reimburse the Appellant his legal costs and other expenses pertaining to this appeal; and

d) Order the Respondent to bear the costs of the arbitration (if any).

51. In essence, the Appellant claims that the presence of Clenbuterol in his system was likely the result of unintentional cross-contamination with equine medication, rather than intentional doping. To support his position, the Appellant considers that the evidence presented satisfies the legal standard of "balance of probabilities" and that the FEI's conclusions were based on outdated and insufficient data.

52. In his submissions, the Appellant describes the facts he indicates to be relevant, with respect to: the controlled use of Clenbuterol in horses as medication and its prohibited use for humans; the unintentional doping, explained through cross-contamination; and his criticism of the FEI's evidence. In such regard, the Appellant underlines *inter alia* that:

- his horse, Silvio, was treated with a medication containing Clenbuterol, which is permitted for horses under certain conditions. This treatment, particularly around the dates when the Samples were collected, could have led to accidental contamination, through physical contact or environmental exposure;
- he did not consciously take any prohibited substances or medications containing Clenbuterol. In his defence, he presented a plausible scenario that accidental contamination could have occurred through interaction with his horse, Silvio. He pointed out that there is limited scientific knowledge regarding the risk of cross-contamination between humans and equine athletes, particularly with substances like Clenbuterol;
- the FEI's rejection of his explanation was based on a 50-year-old scientific study, which does not adequately address modern concerns about cross-contamination;
- the Strahm Report supported the Appellant's view, stating that the FEI's conclusions were not sufficiently supported by solid evidence.

53. In more details, the position of the Appellant can be summarized as follows:

i. the alleged ADRV was not intentional:

- Article 10.2.1 of the ADRHA places the burden on the athlete to prove that the ADRV violation was not intentional. Article 10.2.3 of the ADRHA further defines as "intentional" a conduct where the athlete knew that he violated an anti-doping rule or recognized a significant risk of violation, but ignored it. In this case, the Clenbuterol entered the Athlete's system unintentionally, due to cross-contamination while administering the Product to his horse without protective gear (such as gloves or a mask). This exposure likely led to cross-contamination, which explains the presence of Clenbuterol in his system. He only discovered this after receiving the First Notification Letter. His veterinarian's subsequent investigation revealed that the medication prescribed for the horse contained Clenbuterol;
- the CHUV Report deemed the Appellant's explanation for his positivity as "highly improbable". However, such CHUV Report is flawed and defective for several reasons, such as:
    - incomplete consideration of contamination: the CHUV Report only examined the possibility of airborne contamination during Spasmobronchal administration, incorrectly assuming that the Appellant was wearing gloves. However, the Appellant clarified that he did not use any type of protective gear and could have been exposed through skin, mouth, and eyes;
    - methodological limitations: the CHUV Report acknowledges limitations in its measurement methods and relies on qualitative, not quantitative, analysis. This approach detects the presence, but cannot accurately determine the concentration of Clenbuterol, and the margin of "uncertainty" is not measured. As a result, the actual concentration could well be much lower than the concentration estimated;
    - the CHUV Report examined each suggested route of ingestion in isolation, while the Appellant submits that the absorption of the Prohibited Substance could be the result of the interplay between various routes, leading to analytical results consistent with those reported by the Laboratory, at adjusted concentrations;
    - lack of scientific research: the CHUV Report relies on limited scientific data. It bases its conclusions on estimations and corrections from a single, 50-year-old unpublished study, which is inadequate for this case;
- according to CAS jurisprudence, meeting the balance of probability requires providing actual evidence rather than speculation, with the explanation being more likely than other possibilities. The Appellant asserts that he has met this standard, since:
    - he provided evidence that he was treating his horse with the Product containing Clenbuterol around the time of the doping tests;
    - he was unaware that administering Spasmobronchal could lead to an anti-doping rule violation, only discovering this after notification and consultation with his veterinarian;

- he submitted an expert report explaining the presence of Clenbuterol in his system due to exposure to Spasmobronchal, outlining that Clenbuterol does not provide any competitive advantage in dressage;

- the most likely explanation is that the Appellant unintentionally doped with the same substance found in his horse's medication, despite the small quantity and lack of any sporting advantage;

- the rejecting of his explanation in favour of the FEI's alternative would unjustly raise the balance of probabilities standard beyond what CAS has previously established. He has provided relevant, scientifically supported evidence that aligns with the facts, rather than speculating about how the Prohibited Substance entered his system. The standard only requires showing that his explanation is "*marginally more likely than not*" and the Appellant believes he has met this threshold, demonstrating a lack of intent according to the balance of probabilities;

ii. the Appellant acted with "*no fault or negligence*":

- the circumstances he provided satisfied the standard of care accompanying the definition "*no fault or negligence*" stated in Appendix 1 of the ADRHR;

- it is clearly established how the substance entered the Athlete's body;

- his managing of the medication was aligned with best practices in equine care, as confirmed by Dr Marc Oertly, who noted that it is not customary to wear gloves when administering such medication;

iii. in the alternative, the Appellant acted with "*no significant fault or negligence*":

- the Athlete was administering medication to his horse, and not consuming it himself, which affects the standard of care expected;

- the limit for "no significant fault or negligence" should not be excessively high, as this would undermine fair differentiation in sanctions. Imposing an unrealistic burden on the Appellant to investigate potential risks of cross-contamination would be excessive;

iv. the sanctions should be eliminated or at least reduced:

- the ADRV was unintentional, which implies that an ineligibility period of four years cannot be applied;

- the period of suspension must be eliminated according to the Article 10.5 of the ADRHA, or alternatively, reduced to one year due to no significant fault. Any sanction should give credit to the Athlete's suspension since 1 September 2022.

B. The Position of the Respondent

54. On 23 July 2024 in its Answer, the Respondent requested the CAS:

"*a) to confirm the FEI Tribunal Decision (the Appealed Decision) and leave it undisturbed;*

b) in accordance with Article R65.3 of the CAS Code of Sports-related Arbitration 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;

c) in accordance with Article 64.5 of the CAS Code of Sports-related Arbitration, to order the Appellants to pay all of the costs incurred by the CAS and payable by the Parties in these proceedings (if applicable); and

d) in accordance with Article R.64.5 of the CAS Code of Sports-related Arbitration, to order the Appellant to pay a contribution towards the legal fees and other expenses (such as external scientific experts) incurred by the FEI in defending this appeal."

55. In support of its requests, the Respondent submits *inter alia* the following:

i. with respect to the violation by the Athlete of Article 2.1 of the ADRHA, that an anti-doping violation is based on a "strict liability", meaning that intent or fault does not need to be proven, and the presence of a prohibited substance in the athlete's sample is enough to establish the violation. In this case, the A Samples taken from the Appellant confirmed the presence of Clenbuterol and the Appellant did not dispute these findings. As a result, the burden of proof under Article 2.1 has been met by the Respondent;

ii. as to the presumption of intentional character of the violation and/or significant fault or negligence, that:

- under Article 10.2.1 of the ADRHA, an athlete with no prior doping offenses, who violates Article 2.1 involving a Non-Specified Substance, faces a four-year ineligibility period, unless he proves that the violation was not intentional, in which case the sanction is reduced to two years;
- further reductions or elimination of the sanction are possible if the athlete establishes "No Fault or Negligence" (Article 10.5) or "No Significant Fault or Negligence" (Article 10.6.2). To do so, the athlete must prove how the prohibited substance entered his/her system and that he/she could not have reasonably known or suspected its presence, even with utmost caution. If "No Significant Fault" is proven, the ineligibility period may be reduced but not less than to one year;

iii. as to the "threshold" requirement that evidence is offered of how the Prohibited Substance entered the Athlete's system, that:

- the comment to Article 10.2.1.1 of the ADRHA notes that, while it is theoretically possible for an athlete to prove that a violation was unintentional without identifying how the prohibited substance entered his/her system, it is highly unlikely that an athlete will succeed in such a claim without establishing the source of the prohibited substance. The ADRHA, along with FEI Tribunal and CAS jurisprudence, is very clear: in

cases of "No (or No Significant) Fault or Negligence", the athlete must prove how the prohibited substance entered their system. This requirement is strictly enforced because, without knowing the source, it is impossible to properly evaluate the athlete's level of fault or negligence for the presence of the prohibited substance in their body;

- the Appellant claims that Clenbuterol entered his system while administering Spasmobronchal to his horse on two occasions, several days before the doping tests. To support this claim, the Athlete provided various reports and submissions throughout the proceedings. However:
    - Dr Valle Cardosa only explored in his report various possible ways of contamination, including inhalation, skin contact, digestion, and injection;
    - Dr Emmanuel Strahm stated in his report that it was possible for the Athlete's urine to show the presence of Clenbuterol due to external contamination from handling Spasmobronchal, but without providing any scientific studies or detailed explanations to support this conclusion;
    - the Athlete in his submissions claimed that cross-contamination occurred through contact with the skin, mouth, or eyes, as he allegedly did not wear protective gear while handling the medication. However, these claims were not supported by scientific data or studies and relied primarily on the general conclusions from the reports of Dr Valle Cardosa and Dr Strahm;
- the information provided by the Athlete regarding the use of protective gear during the preparation of the medication is inconsistent. Initially, in the report by Dr Valle Cardosa, the Athlete claimed that, while he never used goggles or a protective mask, he always wore latex gloves when treating the horses. However, in later submissions, the Athlete stated that he did not use any protective gear, including gloves, glasses, or a mask, while administering Spasmobronchal;
- in order to verify the scientific credibility of the Athlete's explanations, the FEI requested an opinion from Professors Thierry Buclin and Jérôme Biollaz, both specialists in pharmacology and toxicology. The CHUV Report they issued:
    - explained Clenbuterol's pharmacology, emphasizing its characteristics;
    - examined the Athlete's claim that he inhaled the Clenbuterol from handling Spasmobronchal granules and noted that the size of the dust particles from the granules would not typically lead to deep pulmonary inhalation: particles larger than 10 µm would be trapped in the nose and throat, while inhaled particles smaller than 0.5 µm would be exhaled, making absorption through inhalation less plausible;

- suggested that any exposure would likely result from contaminated dust settling in the pharynx, absorbed through the digestive tract;
- calculated the amount of Clenbuterol expelled by the Athlete over 24 hours (based on his urinary concentrations) to be consistent with an ingestion of approximately 20-40 µg of the Prohibited Substance;
- remarked that Spasmobronchal granules contain 14 micrograms of Clenbuterol per gram. As a result, the Athlete needed to inhale or ingest 1.5 to 3 grams of dust to reach the levels detected in his system (20-40 µg). However, for the Athlete to inhale such an amount of dust, he would need to spend many hours in an extremely dusty environment, which is unlikely in typical horse care settings;

- an Additional CHUV Report was issued to address the Appellant's response to the CHUV Report, which:
  - clarified that even if the Laboratory test was semi-quantitative rather than fully quantitative, the results remained valid. The concentration of Clenbuterol found in the Athlete's system is still realistic, even if with some margin of uncertainty;
  - reaffirmed that inhalation or ingestion of Clenbuterol remained an improbable explanation;
  - about the hypothesis of the cross-contamination through the skin, eyes, or accidental ingestion, concluded that Clenbuterol's formulation could allow for small amounts to pass through the skin, but it would require prolonged contact to lead to significant absorption. Considering the limited amount of Clenbuterol present in the powder that might stick to the hands after using the Product, this type of contamination was deemed highly improbable. Furthermore, it indicated that eyes' exposure was unlikely to cause significant contamination, and that ingesting enough particles to explain the urinary Clenbuterol levels would require the Athlete to ingest 1-2 grams of granules per day (a teaspoon) over an extended period. A smaller dose ingested closer to the time of urine sampling could theoretically explain the levels, but this scenario did not match the Athlete's own statements;

- in summary, the CHUV Report and the Additional CHUV Report concluded that contamination of the Athlete by Spasmobronchal through inhalation, or contact with the eyes, skin, or mouth, even assuming no gloves were worn, was highly improbable;

- the Athlete's submission included the testimony from Dr Marc Oertly, a veterinarian for the Swiss Jumping Team, claiming that equestrian athletes typically do not use gloves when administering medications like Spasmobronchal. However, despite the lack of protective gear usage, no significant rise in Clenbuterol-positive tests has been observed among equestrian athletes in recent years, contradicting the Athlete's claim of

accidental contamination;

- other potential sources could be suggested: Clenbuterol has anabolic effects, often abused by athletes for increasing muscle mass and reducing body fat. Cases from doping databases frequently reveal that Clenbuterol is voluntarily ingested for weight loss, and in some instances, athletes admitted to using horse medication containing Clenbuterol for this purpose. While the Athlete argued that Clenbuterol would not enhance performance in dressage, its use for weight loss is well-documented, and athletes using it for such reasons have faced significant sanctions. There is then an additional alternative possibility, given that the Athlete admitted to taking various supplements, a common source of Clenbuterol contamination. Despite being advised multiple times by the FEI to re-check his supplements for contamination, the Athlete did not conduct further investigation. Therefore, the possibility that the Athlete ingested the Prohibited Substance as a result of the use of a contaminated supplement cannot be excluded;

iv. as to the non-intentional character of the violation, the Athlete failed to establish the source of the Prohibited Substances found in his Samples. This means that the essential first step to prove lack of intent was not fulfilled; and that the Athlete provided no evidence to substantiate his claim of lack of intent;

v. as to the Athlete's fault or negligence:

- for a sanction reduction based on "No (Significant) Fault or Negligence", the Athlete must first establish both the source and lack of intent, which did not occur here;

- in the alleged scenario presented by the Athlete is it possible to make some observations regarding the lack of appropriate level of care:
    - Spasmobronchal clearly lists Clenbuterol on its label, making it evident that it contains a prohibited substance. The Athlete cannot claim ignorance, as the product's packaging and label visibly indicate Clenbuterol as a major ingredient. Additionally, the Appellant's role as an assistant to the veterinarian makes his claim of ignorance difficult to believe;
    - the medication's leaflet, issued by the Spanish Agency for Medicines and Medical Devices, repeatedly highlights Clenbuterol as an active ingredient and includes relevant warnings. Spasmobronchal was prescribed by a Spanish veterinarian, purchased in Spain, and came with a Spanish leaflet, as confirmed by the athlete and his witnesses. Therefore, only the information in the Spanish leaflet is relevant to this matter and the safety precautions;
    - despite the Athlete providing statements from his veterinarian, none addressed whether the veterinarian advised him to use gloves or take other precautions. The Appellant introduced confusion by first stating he used gloves and later claiming he used no protective gear when handling the Product;

- in conclusion, the Athlete failed to meet the "No Fault or Negligence" standard, as he did not exercise any caution regarding his anti-doping violation. Even if the cross-contamination scenario with his horse's medication were accepted (which the FEI rejects), the Athlete's significant fault or negligence remains evident, as he did not take basic steps, like reading the Product's label. As a highly experienced dressage rider, his failure to prevent the violation further underscores his responsibility;

vi. disqualification of results:

- Article 9 of the ADRHA states that any anti-doping violation during an In-competition test leads to automatic disqualification of the results from that competition, including loss of medals, points, and prizes. This applies even if the period of ineligibility is reduced or eliminated under Article 10, such as in cases of No Fault or Negligence;
- in this case, both positive Samples were collected during competitions. Therefore, all results from the dates of the sample collections (21 May 2022 and onwards) should be automatically eliminated, with no special circumstances justifying a different ending. The Sample 2, taken more than a month after the Sample 1, still showed Clenbuterol in the Athlete's system, indicating its presence from May to July 2022. Consequently, all competitive results from 21 May 2022 until the final decision should be disqualified, with forfeiture of medals, points, and prize money as per Articles 10.1 and 10.10 of the ADRHA;

vii. as to the fine, the FEI has imposed a fine of CHF 5,000 and legal costs of CHF 3,000 on the Athlete, consistent with its guidelines for doping cases. These sanctions should remain unchanged as they align with similar cases.

V. JURISDICTION

56. The jurisdiction of the CAS is not disputed by the Parties.

57. According to Article R47, first paragraph of the CAS Code:

"*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.*"

58. The jurisdiction of CAS is contemplated by Article 39 of the FEI Statutes as follows:

"*39.1 The Court of Arbitration for Sport (CAS) shall judge all Appeals properly submitted to it against Decisions of the FEI Tribunal, as provided in the Statutes and General Regulations.*

39.2 Any dispute between National Federations or between any National Federation

and the FEI, which falls outside the jurisdiction of the FEI Tribunal shall be settled definitively by the CAS in accordance with the CAS Code of Sports-related Arbitration. […]

39.4. The parties concerned acknowledge and agree that the seat of the CAS is in Lausanne, Switzerland, and that proceedings before the CAS are governed by Swiss Law.

39.5. Notwithstanding anything to the contrary in the CAS Code of Sports-related Arbitration, no evidence discoverable by due diligence during proceedings before the FEI Tribunal may be brought before the CAS on Appeal. If any such evidence is produced after a Decision is issued by the FEI Tribunal, it must first be produced to the FEI Secretary General before all legal remedies are exhausted within the meaning of the CAS Code of Sports-related Arbitration. Any such additional evidence produced post-Decision may be the subject of additional proceedings and penalties. […]".

59. In addition, Article 162 of the FEI General Regulations states that:

"*1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorized under the Statutes, GRs or Sport Rules, provided it is admissible […]:*

(b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department. […]

7. Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible.

8. Cross appeals and other subsequent appeals by any respondent named in cases brought to CAS under the FEI Rules and Regulations are specifically permitted. Any party with a right to appeal to CAS must file a cross appeal or subsequent appeal at the latest with its answer. […]"

60. The CAS jurisdiction is finally provided by Article 13.2 of the ADRHA for appeals against decisions in cases arising from participation in an international event (such as the Events), and has been confirmed by the Parties by signing the Order of Procedure. In addition, no Party contested jurisdiction, and all Parties participated fully in these proceedings.

61. The Panel, consequently, has jurisdiction to decide on the appeal filed by the Appellant against the Appealed Decision.

VI. ADMISSIBILITY

62. The Statement of Appeal was filed by the Appellant within the deadline set in Articles 162(7) of the FEI General Regulations and R49 of the CAS Code and complied with the

requirements of Article R48 of the CAS Code. The admissibility of the appeal is not challenged by any Party.

63. The appeal is therefore admissible.

VII. SCOPE OF THE PANEL'S REVIEW

64. According to Article R57, first paragraph of the CAS Code,

"*The Panel has 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. …*".

VIII. APPLICABLE LAW

65. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the CAS Code.

66. Article R58 of the CAS Code provides the following:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

67. In light of the foregoing, the "applicable regulations" in the present case for the purposes of Article R58 of the CAS Code are those adopted by FEI. Swiss law applies subsidiarily.

IX. MERITS

A. The issues

68. The object of this arbitration is the Appealed Decision, which found the Athlete responsible of an intentional violation of Article 2.1 of the ADRHA and consequently imposed on him a period of ineligibility of four years. In essence, the FEI Tribunal held that the Athlete had not provided sufficient evidence to establish, on a balance of probabilities, the source of the Prohibited Substance found in his Samples or the existence of an exceptional scenario demonstrating the lack of intent even in the absence of evidence regarding the source. The Appellant disputes such findings and submits that he proved the source, being the inadvertent ingestion of the Prohibited Substance while personally treating one of his horses with the Product, containing Clenbuterol. As a result, the Appellant submits that no consequence should be applied to him and the Appealed Decision should be set aside. The Respondent, on the other hand, contends

that the Appealed Decision was correct, and seeks the dismissal of the appeal.

69. As a consequence of the foregoing, there are two main issues before this Panel, which is called to decide:

i. whether the Athlete has committed an antidoping rule violation; and

ii. if an anti-doping rule violation was committed, what is the appropriate sanction to be imposed.

70. The Panel will examine those issues in sequence.

i. Did the Athlete commit an Anti-Doping Rule Violation pursuant to Article 2.1 of the ADRHA?

71. Article 2.1.1 of the ADRHA provides as follows:

"*It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*"

72. This provision contains the following footnote:

"*[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]*"

73. The Athlete does not contest that he committed an anti-doping rule violation in the sense that the Prohibited Substance was present in his Samples. Consistently, he also raises no issue with respect to the validity of the Samples, the identity thereof, the chain of custody, or other similar matters potentially relevant in this context.

74. In accordance with the strict liability principle, the presence of Clenbuterol in the Samples is an anti-doping rule violation, regardless of whether the Athlete acted with intent, No Fault or Negligence or No Significant Fault or Negligence. Such circumstances are taken into account in imposing an appropriate sanction in the section below, but do not impact on whether or not an Anti-Doping Rule Violation is committed.

75. Consequently, the Panel confirms that the Athlete committed an anti-doping rule violation pursuant to Article 2.1 of the ADRHA.

ii. If an anti-doping rule violation was committed, what is the appropriate sanction to be imposed?

a. The Legal Framework

76. The provisions of the ADRHA relevant to the case of an anti-doping rule violation for the presence in an athlete's samples of a Non-Specified Substance, prohibited both in- and out-of-competition, such as Clenbuterol (the Prohibited Substance found in the Samples), invoked by the Parties in the present arbitration, are the following:

"*10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method*

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. […]

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. […]

10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If the Athletes or other Persons establish in an individual case that they bear No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

10.6.1.1 Specified Substances or Specified Methods […]

10.6.1.2 Contaminated Products […]

10.6.1.3 Protected Persons or Recreational Athletes […]

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If the Athletes or other Persons establish in an individual case where Article 10.6.1 is not applicable that they bear No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7,

the otherwise applicable period of Ineligibility may be reduced based on the Athletes or other Persons' degree of Fault, 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."

77. For the purposes of those rules, the following "*Definitions*" set by the ADRHA are relevant:

"*Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2*"

"*No Fault or Negligence: The Athletes or other Persons' establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system*"

"*No Significant Fault or Negligence: The Athlete or other Person's establishing that any 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 anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system*".

78. In light of such framework, therefore, the consequences for the Athlete deriving from the anti-doping rule violation may vary from a period of ineligibility of 4 years, if he does not establish that the anti-doping rule violation was not intentional (Article 10.2.2 of the ADRHA), to no ineligibility period at all, if he proves that he bears no fault or negligence (Article 10.5 of the ADRHA). However, the period of ineligibility could be in a range between 2 years and 1 year (*i.e.*, one-half of the period of ineligibility otherwise applicable) should he prove that the violation was not intentional, if he bears no significant fault or negligence (Article 10.6.2 of the ADRHA).

79. As a result, additional questions need to be analysed in order to identify the consequences applicable to the Athlete.

b. Did the Athlete establish that the anti-doping rule violation was not intentional?

80. The first step for this Panel is to verify under the ADRHA whether the Athlete has established, for the purposes of Article 10.2.1, on a balance of probability (Article 3.1 of the ADRHA), that the anti-doping rule violation resulting from the AAF was not intentional, *i.e.* that he engaged in a conduct which he did not know that it constituted an anti-doping rule violation or that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk (Article 10.2.3 of the ADRHA). Only if the Panel comes to the conclusion that it is more likely than not that the Athlete's conduct was not intentional, and therefore that the sanction of 4 years of ineligibility does not apply, can the existence or degree of fault be explored in order to verify whether the period of ineligibility for 2 years applicable for unintentional doping (Article 10.2.2 of the ADRHA) can be eliminated (Article 10.5 of the ADRHA) or reduced (Article 10.6 of the ADRHA).

81. A series of CAS cases have held that the athlete, who tested positive for the presence of a non-Specified Substance, must establish how that substance entered his/her body, bears in order to discharge the burden of establishing, by a balance of probabilities, that he acted unintentionally (for example, CAS 2017/A/5248, CAS 2017/A/5295, CAS 2017/A/5335; CAS 2017/A/5392; and CAS 2018/A/5570). However, other CAS awards – notably CAS 2016/A/4534 (*Villanueva*), CAS 2016/A/4676 and CAS 2016/A/4919 (*Iqbal*) – have found that in "extremely rare" cases, an athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. The *Villanueva* award refers to the "*narrowest of corridors*" and the *Iqbal* award stated that "*in all but the rarest cases the issue is academic*". These cases emphasised that it will be rare for an athlete to be able to rebut the presumption of intentionality without establishing the origin of the prohibited substance.

82. The Panel shall follow the same approach and shall first examine whether the Athlete has been able to establish the source of the Prohibited Substance in the Samples. Only in the event the source is not established, is an examination required of whether the Athlete's case is one of the "rarest cases" in which a lack of intent has been nonetheless demonstrated. On the other hand, should the "route of ingestion" be found as demonstrated and in its respect lack of intent proved, there would also be for the Panel the possibility to further verify whether "*No Fault or Negligence*" under Article 10.5 of the ADRHA ("NF") or "*No Significant Fault or Negligence*" for the purposes of Article 10.6.2 of the ADRHA ("NSF") can be attributed to the Athlete.

83. A preliminary point is to be made, before the Athlete's submissions are examined. As stated in CAS 2010/A/2230:

"*To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes*

for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body".

84. In other words, a mere denial is not sufficient for an athlete to establish a case of lack of intent. In addition, evidence establishing that a scenario is possible is not enough to establish the likely origin of the prohibited substance. The Panel endorses the approach taken in CAS OG 16/25:

"*... the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] true*".

85. The Player submits that he inadvertently absorbed the Prohibited Substance by a combination of inhalation, contact, and/or ingestion when administering the Product to one of his horses in a dusty stable only a few days before the Events. The FEI, in turn, contends that the Player has failed to establish, on a balance of probability, that the anti-doping rule violation is the result of an unintentional and inadvertent ingestion of the Prohibited Substance. In essence, FEI highlights that the experts' opinions produced confirm that the concentrations of Clenbuterol found in the Samples contradict the Athlete's explanations.

86. The Panel holds that the Appellant discharged his burden to prove the "route of ingestion" in the terms he submitted. In other words, the Panel is satisfied (albeit not comfortably so) that the Athlete's defence is more likely than not to be true. In that respect, the Panel underlines that a finding based on a balance of probabilities (or on "preponderance of evidence") is consistent with the existence of a possibility, although not preponderance, that the Athlete's explanation is not true: even a reasonable doubt would in that regard not prevent a finding in favour of the Athlete.

87. In the present case the Panel notes, with respect to the "route of ingestion", the following elements as established in favour of the Athlete or undisputed:

- one of the Athlete's horses was affected by a disease requiring the administration of the Product, which contains the Prohibited Substance;
- the Substance was therefore present in the Athlete's barn;
- the Product was prescribed by a veterinarian to be administered in courses of 10 days;
- to the extent relevant in this arbitration, the Product was administered to the Athlete's horse in the periods between 10 and 25 May 2022, and between 19 to 29 June 2022, ending therefore in the proximity of the Events;
- it is common to administer the Product to a horse by mixing it to the food;
- the Athlete himself administered the Product to the horse in the periods 10-17 May 2022 and 27-29 June 2022;
- as a result, the Athlete came into contact with the Substance respectively 4 and 9

days before the Sample 1 and Sample 2 were collected;

- the analyses of Sample 1 and of Sample 2 returned estimated concentrations that (although uncertain in absolute terms: see below) show a meaningful difference in comparison between them: 1.5 ng/mL for Sample 1 and 0.04 for Sample 2. The differences in the analytical findings with respect to the concentrations detected can be credibly linked to the different period between the contact with the Substance and the sample collection at the two Events;
- the practice of not wearing gloves, glasses, or masks while administering this Product is not unusual. Therefore, it is credible that the Athlete did not wear any protection while administering the Product;
- as a result, it is possible that the Athlete, in combination, inhaled, ingested, or absorbed by dermal or ocular contact the Prohibited Substance;
- the estimations provided by the Laboratory are uncertain, as they show only a qualitative finding. Therefore, the quantitative concentrations, on which the Respondent's contention (that their measure cannot be explained by accidental inhalation or contact) is based, are not established to the comfortable satisfaction of the Panel. In that regard, the Panel finds that it was the FEI's burden to establish the factual circumstances on which its argument was based;
- the FEI expert confirmed at the hearing that lower concentrations could be consistent with the explanation given by the Athlete;
- the alternative "routes of ingestion" suggested by FEI (direct administration to improve performance; use of a contaminated supplement) are less likely than the Athlete's explanations: weight or strength are not key elements in this kind of sport (where men and women compete together); ingestion of a contaminated product was not explored, but the Athlete justified his decision not to test the supplements he was taking, being convinced of his explanation.

88. In summary, the Panel finds, on balance of probabilities, that the source of the presence of the Prohibited Substance in the Samples was its inhalation, ingestion and/or absorption by the Athlete when administering the Product without protections to one of his horses some days before the Events.

89. The foregoing leads also the Panel to conclude that lack of intent was established by the Athlete. The peculiarities of the "route of ingestion" show in fact that the Athlete did not engage in a conduct which he knew to constitute an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

90. As a result, the sanction for the Athlete should not have been of a 4-year period of ineligibility (pursuant to Article 10.2.1 of the ADRHA), but of 2 years (in accordance with Article 10.2.2 of the ADRHA), subject, if the facts demonstrate, to elimination or reduction under Articles 10.5 or 10.6 of the ADRHA).

c. Did the Athlete establish that he bore "No Fault or Negligence" or "No Significant Fault

or Negligence"?

91. The above conclusion, in fact, makes it possible for the Panel to explore whether the Athlete established that he bore NF or NSF. The first condition under the ADRHA for the elimination or the reduction of the period of ineligibility (*i.e.*, that the Athlete must have established how the Prohibited Substance entered his system) is in fact fulfilled.

92. The circumstances mentioned above (§ 87), however suitable to prove the "source", show at the same time that the Athlete was highly negligent: the Product mentioned on the label the presence of the Prohibited Substance (see picture below); the Athlete did not use any protection to avoid contamination, by way of contact, ingestion or inhalation.

93. At the same time, the Panel notes that the Athlete was an experienced international-level athlete, whose career has spanned over many years; in addition, he had the possibility to enter the Spanish Olympic team. The Athlete should have been fully aware of his anti-doping obligations.

94. As a result, having regard to all of the circumstances of the case, the Panel comes to the conclusion that the Athlete's degree of fault was, despite of not acting intentionally, very high and accordingly warrants the imposition of a sanction corresponding to the standard measure for such cases, without any mitigation.

B. Conclusion

95. In summary, the Panel finds that the Athlete, while not intentionally committing an anti-doping rule violation, was seriously negligent. As a result, the Decision, based on a finding of intentional doping, is to be set aside and replaced by a decision imposing a period of ineligibility for 2 years as from the day of notification of this award, with credit given for the period of provisional suspension and of ineligibility already served. Since the Athlete was provisionally suspended on 1 September 2022, the entire period has already been served.

96. All other points of the decision rendered on 4 June 2024 by the FEI Tribunal are confirmed. The Panel notes in fact that Athlete was sanctioned in the Decision also with a fine and had to pay the cost of the FEI internal proceedings. The Panel finds that such portion of the Decision is to be left undisturbed: indeed, the Athlete committed an anti-doping rule violation justifying the internal disciplinary proceedings and a high level of fault is found by this Panel. As a result, the fine of CHF 5,000 in a scale to 15,000 (as per Article 10.12.1 of the ADRHA) appears to be proportionate to the level of the Athlete's fault.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Agusti Elias Lara on 20 June 2024 against the decision rendered on 4 June 2022 by the FEI Tribunal is partially upheld.

2. Mr Agusti Elias Lara is declared ineligible to participate in any competition or other activity for a period of two (2) years pursuant to Article 10.6.2 of the ADRHA as from the day of notification of this Award, with credit given for the period of Provisional Suspension and of ineligibility already served.

3. All other points of the decision rendered on 4 June 2024 by the FEI Tribunal are confirmed.

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 4 March 2025
Operative Part issued on 16 October 2024

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President of the Panel

Jeffrey G. Benz
Arbitrator

Bernhard Welten
Arbitrator