CAS 2019/A/6283 Paulo Sergio Mateo Santana Filho v. Fédération Equestre Internationale

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Carine Dupeyron, Attorney-at-Law in Paris, France

Arbitrators: The Hon. Bruce W. Collins Q.C, Barrister in Sydney, Australia

Markus Manninen, Attorney-at-Law in Helsinki, Finland

in the arbitration between

Mr. Paulo Sergio Mateo Santana Filho, Florida, USA

Represented by Mr. Alan M. Burger, McDonald Hopkins LLC, 505 South Flagler Drive, Suite 300, West Palm Beach, Florida, FL 33401, United States

Appellant

and

Fédération Equestre Internationale, Switzerland

Represented by Ms. Anna Thorstenson and Ms. Ana Kricej, Chemin de la Joliette 8, 1006 Lausanne, Switzerland

Respondent

I. THE PARTIES

1. The Appellant is Paulo Sergio Mateo Santana Filho (the "Athlete"), an elite showjumper, FEI ID: 10027830/ESA. He was born in Brazil, lives in Wellington, Florida, U.S.A, and competes for the El Salvador National Federation.

2. The Respondent is the Fédération Equestre Internationale (the "FEI"), the international governing body for all Olympic equestrian disciplines, including show-jumping. The FEI's responsibilities include the management and enforcement of the FEI Anti-Doping Rules for Human Athletes (the "ADRHA"), which is based on the World Anti-Doping Code. The FEI is based in Lausanne, Switzerland.

3. The Athlete and the FEI are hereinafter collectively referred to as the "Parties".

II. SUMMARY OF THE MAIN RELEVANT FACTS

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

A. The sample collection at the Event

5. On 9 June 2018, the Athlete was tested during his participation, in the discipline of jumping, at the CSI5* event at Spruce Meadows in Calgary, Canada (the "Event").

6. In the course of the collection process, the Athlete's urine sample was divided into an A Sample and a B Sample; both samples were then sent for analysis to a WADA Accredited Laboratory, the Laboratoire de Contrôle du Dopage, INRS, located in Québec, Canada (the "Laboratory").

7. The Athlete's samples were given reference number "4140772" (collectively, the "Sample").

8. The sample collection process is criticized by the Appellant and will be further detailed below at paras. 66 ff below.

B. The Adverse Analytical Finding for Boldenone in the Sample

9. The Laboratory analyzed the Athlete's A Sample and returned a positive result for boldenone and its metabolite, which are Prohibited Substances under the 2018 Prohibited List of the World Anti-Doping Agency ("WADA"), in force at the time of sample collection.

10. Specifically, boldenone is listed in class S1 – "Anabolic Agents" of Prohibited Substances and is considered a "Non-Specified Substance" under the 2018 WADA Prohibited List. It is always prohibited (in- and out-of-competition).

11. The Laboratory's Report confirms that the IRMS results are consistent with exogenous origin of boldenone and its metabolite. The estimated concentration of boldenone in the Sample was 3 ng/ml.

12. No therapeutic use exemption for boldenone had been granted to the Athlete as provided in the International Standard for Therapeutic Use Exemptions in accordance with Article 7.2.2 ADRHA.

13. The positive finding of boldenone in the Athlete's sample gives rise to an Anti-Doping Rule Violation ("ADRV") under Article 2.1 ADRHA.

C. The FEI charged the Athlete with a violation of Article 2.1 ADRHA

14. By notification letter dated 11 July 2018, the FEI charged the Athlete with a violation of Article 2.1 ADRHA based on the Laboratory's adverse analytical finding ("AAF") of boldenone in the Athlete's Sample collected at the Event. The Athlete was provisionally suspended from that date.

15. In the notification letter of 11 July 2018, the Athlete was informed that he had the right to request the analysis of the B Sample. The Athlete made such request, and the results were notified on 5 September 2018. The analysis of the B Sample confirmed the analysis results of the A Sample (i.e. presence of boldenone and its metabolite).

16. The Athlete then requested, and was granted, a Preliminary Hearing regarding the lifting of the provisional suspension.

17. On 27 July 2018, the FEI Tribunal rendered a Preliminary Decision maintaining the provisional suspension of the Athlete.

18. On 24 September 2018, the Appellant, on advice of his Counsel, admitted the AAF in a letter to the FEI and confirmed that he had committed an ADRV.

19. On 19 November 2018 and 8 February 2019, the Athlete submitted that he no longer believed that the source of the AAF was contaminated meat but instead accidental skin contact with boldenone that occurred when he treated non-FEI registered military horses with boldenone, on one of his *pro bono* visits to the cavalry division of the El Salvadoran Military.

20. A Final Hearing took place before the FEI Tribunal on 20 March 2019.

D. The Appealed Decision

21. On 25 April 2019, the FEI Tribunal issued its decision imposing the final ineligibility period of 4 years on the Appellant (the "Appealed Decision").

22. The FEI Tribunal confirmed that there had been an ADRV under Article 2.1 ADRHA and that the FEI has satisfied its burden of proof in the following terms:[1]

"*The Hearing Panel is satisfied that the FEI established that an anti-doping rule violation has occurred under Article 3 ADRHA. The results of the analysis of the initial Sample and the B-sample confirmed the presence of Boldenone in the Athlete's system and constitute sufficient proof of the violation of Article 2.1 of the ADRHA. Furthermore, the Athlete did not dispute the presence of Boldenone in his Sample and admitted the anti-doping rule violation on 24 September 2018.*"

23. Regarding the source of the boldenone in the Athlete's sample at the Event, the FEI Tribunal found that: "*the Athlete did not prove the source of the Boldenone on a balance of probability*" and "*that there are no exceptional circumstances that would not require proving the source*".

24. In addition, the FEI Tribunal found that the Appellant failed to establish that the ADRHA violation was not intentional, and concluded in this context that:

"*In summary, the Hearing Panel finds that the Athlete did not establish the source of the Boldenone found in his Sample. In a further step, the Hearing Panel also finds that the Athlete failed to establish that the ADRHA violation was not intentional. Intent does not require the Athlete be a regular user of a Prohibited Substance. Pursuant to Article 10.2.3 ADRHA, the term "intentional" required that the Athlete engaged in a conduct which he 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. Although intentional use cannot be ruled out, the Athlete at the very least engaged in conduct which he knew carried a significant risk and disregarded that risk for all the reasons set out in this decision.*" [emphasis added]

25. The FEI Tribunal accordingly imposed a four-year period of ineligibility on the Appellant pursuant to Article 10.2 ADRHA, ordered the Appellant to pay a fine of CHF 4,000 and a contribution of CHF 5,000 towards the costs of the judicial procedure, and disqualified the results of the Athlete from the Event.

26. In summary, the Appealed Decision confirmed that:

- an ADRV had occurred;
- the Appellant failed to establish a plausible source of his AAF, on the balance of probability;
- the Appellant failed to establish no intent and/or no fault;

[1] Appealed Decision at para 15.5.

- the standard sanction for a non-specified substance, i.e. 4 years ineligibility period was therefore imposed on the Athlete.

27. The present appeal (the "Appeal") arises out of the above Appealed Decision to impose a final ineligibility period of 4 years to the Athlete for the violation of Article 2.1 ADRHA (presence of a Prohibited Substance or its metabolites or markers in an athlete's sample).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 16 May 2019, Mr. Santana filed his Statement of Appeal and supporting exhibits with the Court of Arbitration for Sport (the "CAS") against FEI with respect to the Appealed Decision rendered by the FEI Tribunal on 25 April 2019, in accordance with Article R47 of the Code of Sports related Arbitration (2019 edition) (the "CAS Code").

29. Mr. Santana nominated the Hon. Bruce Collins QC, Barrister in Sydney, Australia, as arbitrator as per Article R50 CAS Code and requested that the language of the arbitration be English.

30. On 20 May 2019, the CAS Court Office invited the Appellant to file an Appeal Brief and also invited the FEI to proceed with the nomination of an arbitrator.

31. On 21 May 2019, in accordance with Article R51 CAS Code, the Appellant requested the suspension of his time limit to file his Appeal Brief originally due by 27 May 2019 and stated that the FEI did not oppose to such request. In view of the Parties' agreement, the CAS suspended the Appellant's time limit to file the Appeal Brief until further notice from the CAS Court Office.

32. On 29 May 2019, the FEI nominated Mr. Markus Manninen, Attorney-at-Law in Helsinki, Finland, as arbitrator.

33. On 23 July 2019, the CAS Court Office noted that while the Appellant had requested a suspension of the Appeal Brief, the procedure itself was not suspended. The Appellant was requested to provide an update on the status of appeal and in particular, whether the entire procedure should be suspended.

34. On 24 July 2019, the Appellant explained that both Parties agreed to suspend the deadline for the Appellant to file his Appeal Brief and that there were no pending deadlines in this matter. The Appellant also noted that the CAS may decide to continue as things stand or suspend the procedure itself, pending a further update from the Parties.

35. By letter of the same day, the CAS Court Office replied that it is presumed that the Parties wish to suspend the entire procedure unless the Parties stated otherwise within 5 days.

36. On 6 August 2019, the CAS Court Office suspended the procedure, as no Party objected to this suspension, in accordance with Article R32 CAS Code.

37. On 11 February 2020, the CAS Court Office invited the Parties to update it on whether the proceedings shall remain suspended, be considered as withdrawn or shall resume.

38. On 12 February 2020, the FEI replied that it had recently been informed that Mr. Santana had changed legal counsel. The FEI therefore requested that the proceedings be resumed as soon as possible. By letter of the same day, the CAS Court Office invited the Appellant to comment on such request and to inform the CAS Court Office on whether he has changed counsel and if so, provide a new power of attorney.

39. On 17 February 2020, the Appellant's new counsel sent a power of attorney to the CAS Court Office and explained that the FEI had refused to meet or even discuss the issues to settle this dispute amicably. In addition, the Appellant's new counsel requested that the Panel "*mandate that FEI provide and produce (i) all paperwork relating to Mr. Santana, (ii) the collection and custody of all urine at the event in question, (iii) all notes of communication and communication with his former counsel and (iv) any materials relating to any other athletes or animals whose samples were tested and transported at the event in question*".

40. On 18 February 2020, the CAS Court Office sent the Notice of Formation of a Panel together with copies of Acceptance and Statement of Independence forms signed by the arbitrators to the Appellant and Respondent pursuant to Articles R33, R52, R53 and R54 CAS Code. The Panel was constituted as follows:

President: Carine Dupeyron, Attorney-at-Law in Paris, France

Arbitrators: The Hon. Bruce W. Collins Q.C, Barrister in Sydney, Australia
Markus Manninen, Attorney-at-Law in Helsinki, Finland

41. On 24 February 2020, the Appellant requested that the "*Test data entry and doping control form*" be considered in connection with the earlier request to mandate production of documents and the Panel order that the obligation to pay the fines not be required to be paid until the appeal process is completed and final.

42. On 3 March 2020, the Panel requested that the Parties complete a Redfern Schedule for purposes of identifying the information/data/documents that the Appellant actually sought and the grounds for the Respondent's refusal, if any, to provide such information/data/documents. Respondent was also invited to confirm within 7 days that it waived the enforcement of the financial part of the Appealed Decision until a final Award has been rendered in this case.

43. On 9 March 2020, the Appellant sent its Redfern Schedule duly completed and the Respondent was invited by the CAS Court Office to either voluntarily produce such information/data/documents or to state the basis of its objection.

44. On 17 March 2020, the Respondent replied to the Appellant's Redfern Schedule and attached the documents responsive to the accepted requests.

45. On 18 March 2020, the Appellant explained that he had requested documents from the FEI "*in an effort to try and resolve the issues*" and requested a "*procedure for inspection of the originals, including an understanding of how the enclosed email was prepared (meta data)*". The Respondent replied to this letter on the same day.

46. On 23 April 2020, the CAS Court Office sent the Parties the Panel's decision as regards each document production request.

47. On 28 April 2020, the CAS Court Office acknowledged receipt of the Respondent's documents and advised that the suspension of the Appellant's time limit to file the Appeal Brief was lifted with immediate effect.

48. On 27 May 2020, Mr. Santana submitted his Appeal Brief, together with supporting exhibits, to the CAS Court Office.

49. On 27 May 2020, the CAS Court Office invited the Respondent to submit its Answer.

50. On 13 July 2020, the FEI submitted its Answer to Mr. Santana's Appeal Brief.

51. On 14 July 2020, the CAS Court Office invited the Parties to state their position on the holding of a hearing.

52. On 20 July 2020, the Appellant requested that a hearing takes place by videoconference while the Respondent stated that it did not consider a hearing necessary.

53. On 22 July 2020, the Appellant requested that the Panel, "*given FEI has inserted microdosing as a possibility*", admits into the record the exhibits enclosed in its letter, specifically, "*the attached WADA committee reports and materials*". The Appellant also asked whether there was a procedure for compelling witnesses to appear at the hearing and informed the CAS Court Office that it wished to cross-examine certain witnesses. The Respondent objected to the admissibility of the submitted documents and requested that the Panel does not take them into consideration.

54. On 23 July 2020, the CAS Court Office informed the Parties that the Panel did not have jurisdiction to compel a third party to provide evidence or information.

55. On 14 August 2020, the CAS Court Office informed the Parties that, pursuant to Article R57 CAS Code, the Panel decided to hold a hearing by videoconference. To account for the time difference, the hearing would be held over three days.

56. On 20 August 2020, the CAS Court Office informed the Parties that the hearing would be held on 4, 5 and 6 November 2020, considering the Parties' and the Panel's availabilities.

57. On 29 September 2020, the CAS Court Office informed the Parties that the Panel decided that:

- the documents submitted by the Appellant on 22 July 2020 were admissible;
- the Respondent was granted an opportunity to comment on these elements;
- the Respondent was invited to provide witness statements as required in Article R55 CAS Code; and
- witnesses could not view or attend the testimony of one another, and clarified that lawyers or Parties' representatives could not disclose the testimony of one witness to any other witness.

58. On the same date, the Appellant sent his witness list and attached a letter written to WADA.

59. On 29 October 2020, a Revised Hearing Schedule and an Order of Procedure were sent to the Parties by the CAS Court Office. On the same day, the FEI sent additional comments to the Revised Hearing Schedule and returned the Order of Procedure signed. On 2 November 2020, the Appellant in turn returned a signed copy of the Order of Procedure.

60. On 4, 5 and 6 November 2020, the hearing on the merits (the "Hearing") took place by video-conference.

61. In addition to the Panel and Ms. Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the Hearing:

- For the Appellant: Mr. Paulo Santana, the Athlete;
  Mr. Alan M. Burger, Counsel;
  Ms. Mary April, Counsel;
  Ms. Denise Doran, Paralegal;
  Ms. Jennifer Santana, the Athlete's wife, Witness;
  Ms. Kristen Senger, the Athlete's former student, Witness;
  Dr. Kenneth D. Graham, Expert.
- For the Respondent: Ms. Anna Thorstenson, Counsel;
  Ms. Ana Kricej, Counsel;
  Ms. Deborah Hawkins, Doping Control Officer (a "DCO"), Witness;
  Ms. Nicki Gardiner, DCO, Witness;
  Prof. Christiane Ayotte, Expert.

62. The Parties were given at the Hearing a full opportunity to present their case, submit their arguments/submissions and answer the questions posed by the Panel and allegations made by the Parties' experts on the issues in dispute. The Hearing encountered limited technical difficulties, mainly related to the sound quality due to the multiple connections. However, none of these short difficulties affected the Parties' opportunities to present their case or the Panel's attendance and listening of the Parties. The Parties expressly confirmed at the end of the Hearing that they had no objection as to the way in which the proceedings had been conducted and that their right to be heard had been fully respected.

IV. SUMMARY OF THE PARTIES' POSITIONS

63. This section of the Award does not contain an exhaustive list of the contentions but rather only a summary of the principal arguments of Mr. Santana (**A.**), and the FEI (**B.**) in relation to the Appeal, as presented in the Parties' written submissions and orally during the Hearing. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in this arbitration, only the submissions and evidence required for purposes of its findings on law and fact are addressed in this Award.

A. Mr. Santana's prayer for relief and submissions

64. Mr. Santana's Prayers for Relief (**a.**) and Submissions (**b.**) are set forth below.

a. Mr. Santana's Prayers for Relief

65. In his Appeal Brief of 27 May 2020, Mr. Santana requested the following relief from the CAS:

"*The Athlete respectfully requests the Panel to:*

(a) determine that the appeal is admissible;

(b) set aside the Decision;

(c) eliminate or otherwise reduce the period of ineligibility imposed on the Athlete; and

(d) order the FEI to:

(i) reimburse the Athlete his legal costs and other expenses pertaining to this appeal; and

(ii) bear the costs of the arbitration."

b. Mr. Santana's Submissions

66. In his Appeal Brief, Mr. Santana summarized his key arguments in Section 14 "*Summary of Argument*" which has been essentially reproduced below.

i. Mr. Santana's Submissions on the source of the AAF

- "*The Athlete has over 20 years' involvement in professional equestrian sports and is respected as a top-level competitor. He also maintains professional stables in the Wellington, Florida area, he has owned over 800 horses*", and he voluntarily helps and trains equestrians in Guatemala and El Salvador and as well as provides assistance with military horses.

- The Athlete stated in his written submissions and at the Hearing that "*[h]e has no reason to use boldenone because it is counterproductive to being the best in his sport*". Therefore deliberate injection or ingestion of boldenone would not have a favorable result for equestrian sports.

- During the proceedings before the FEI Tribunal, the Athlete explained that the contaminated meat was his suspicion for the source of the boldenone found in his urine sample. Another possible source could have been the contamination by skin absorption while assisting equestrians in El Salvador. During the CAS proceedings the Athlete offered an additional explanation for a potential contamination during the sample collection process.

- "*To rebut the presumption that he committed an ADRV, the Athlete need only show by the balance of probability, that is, more likely than not, that the source of the boldenone was his unknowingly eating contaminated meat 20 days prior to the sample or through skin absorption*" or through contamination during the sample collection process.

- "*The Athlete's expert, Dr. Graham, a forensic toxicologist, ruled out the deliberate injection of boldenone because, using the elimination half-life of boldenone, the Athlete would have to have deliberately used it no more than approximately 84 days prior to giving his sample for it to show up in the sample at all, but that his hair sample test was negative, which would detect the use of boldenone longer than the urine sample. The two outcomes are mutually exclusive.*"

- "*In the case of FISA v. Gomez, the athlete demonstrated that he had most likely eaten contaminated meat, unbeknownst to him, two days prior to his sample being taken and that this was in Mexico, a country known for lax meat standards, just like Guatemala. In that case, Dr. Ayotte testified that she could rule out deliberate use in Mr. Gomez's case because he had tested negative 14 days earlier, a 14-day window. It is highly unlikely that Dr. Ayotte would be able to show that an additional 6 days (the total time from when the Athlete consumed the contaminated meat to the time of the sample) would result in her finding that a deliberate injection could have resulted in the Athlete's level of boldenone, which was even lower than*

in Mr. Gomez's sample. Further, the fact that Mr. Gomez's sample showed the presence of boldenone 48 hours after ingestion is strong evidence that the FEI's statement that boldenone ingested through contaminated meat would be excreted within 12-24 hours is incorrect."

- Lastly, during the CAS proceedings and in more details during the Hearing, the Athlete alleged that "*the sample collection process by the FEI in this case was badly flawed and departed in multiple ways from WADA's International Standards. There were several opportunities for contamination, whether unintentional or intentional, that could have caused the [AAF]. Under these circumstances, the FEI is unable to establish that these departures were not the cause of the [AAF]*".

67. At the Hearing, the Athlete developed an entirely new theory relating to his potential contamination during the collection of the Sample, based on the fact that when he urinated to provide the Sample, he certainly touched contaminated surfaces in the bathroom, most likely the faucet and that, after when trying to urinate into the sample collection vessel, he involuntarily urinated on his contaminated hands and the urine dribbled from his hands in his sample collecion vessel and caused the AAF.

i. Mr. Santana's Submissions on the Appellant's plea of lack of intent and no fault and negligence

68. According to the Athlete, "*[t]he FEI has not carried its burden of showing an ADRV by the Athlete and, even assuming that they did, the Athlete has shown by the balance of probability that he bears no fault or negligence or that he bears no significant fault or negligence. The suspension should be eliminated or, at a minimum, reduced to two years*".

B. The FEI's prayer for relief and submissions

69. The FEI's Prayers for Relief (**a.**) and Submissions (**b.**) are set forth below.

a. FEI's Prayers for Relief

70. In its Answer to Mr. Santana's Appeal Brief, the FEI requested the following relief from the CAS:

"[...] *the FEI respectfully asks the CAS Panel:*

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

(b) in accordance with Article R65.3 CAS 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 R64.5 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; 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 (a minimum of 5 000 CHF) incurred by the FEI in defending this appeal."

b. FEI's Submissions

i. FEI's Submissions on the source of the Adverse Analytical Finding

71. For the FEI, the ADRV is established under Article 2.1.2 ADRHA, as the results of both the A and B samples confirmed the presence of boldenone and its metabolite. The FEI recalls that under Article 2.1 ADRHA, the mere presence of a prohibited substance is an ADRV, and it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated. The FEI has accordingly established that an ADRV has occurred in accordance with Article 3.1 ADRHA, as confirmed by the FEI Tribunal.

72. The FEI then argues that none of the defenses and explanations of the Appellant (meat contamination during travels to Guatemala and El Salvador, food supplements, transdermal transmission of droplets while injecting horses in El Salvador with boldenone, flaws in the chain of custody and eventually contamination during the doping control process) prove the source of the AAF on a balance of probability.

73. *On the alleged meat contamination*, the FEI consulted Professor Ayotte, the Director of the WADA Accredited Laboratory in Québec, Canada. Professor Ayotte has provided the FEI with three expert reports, in reply to the Appellant's three expert reports of Mr. Nekrashevich, Dr. Kintz and Dr. Graham. Professor Ayotte dismissed both the alleged meat contamination and the alleged transdermal transmission explanations as highly unlikely scenarios.

74. In the proceedings before the FEI Tribunal, both the Appellant himself and Mr. Nekrashevich in his expert report, did rule out the alleged meat contamination explanation with the assertion that boldenone excretes very quickly when ingested orally, and therefore submitting another scenario, namely the alleged transdermal transmission. Now, before CAS, the Appellant has once again put forward this argument as the most plausible explanation of how the boldenone must have entered his system. However, the Appellant did not provide any clear and corroborated evidence or details of him ingesting the alleged contaminated meat; such as: timing *i.e.* date and time of when the meat was supposed to have been consumed (only indicating during 3 days), where such meat was purchased or produced (only indicating it was local), or the quantity and the kind of meat that allegedly was ingested (only indicating it was pork and beef and at the Hearing, certain parts concentrating substances such as boldenone). Neither did the Appellant provide any scientific evidence to support his theory that boldenone could be present in the body of an athlete 20 days after contaminated meat consumption and at the levels found in his sample, 3 ng/ml.

75. The FEI agrees with the Appellant that anabolic agents such as boldenone can remain in the body of an athlete (human or equine) and be detectable for a very long time, even up to several months, when administered by injection. However, if boldenone is

ingested orally, in low quantities through meat contamination, it would be rapidly eliminated like any other low amounts of steroids. Professor Ayotte hence refused this evidence already at the preliminary stage of the FEI Tribunal procedure, where she explained that if a low quantity of boldenone is ingested by mouth, it would very rapidly be excreted.

76. One cannot presume that, only because pork or beef meat is proven to contain anabolic steroids two months after injection of boldenone, that such residues in the meat can lead to a positive test in a human who consumed such meat over 20 days after such ingestion.

77. Professor Ayotte stated in her third expert report the following conclusions:

- orally ingested boldenone is rapidly metabolized and the detection time is less than 3 days;

- since there are no previous negative tests of the Athlete in this case, the window of detection of an injection cannot be limited to any period of time as opposed to the statement of Dr. Graham who claims that an injection of boldenone undecylenate is not compatible with the amount of boldenone detected in the Athlete's urine; and

- the Appellant compared the detection period of clostebol to boldenone, but according to Professor Ayotte those two compounds are not comparable; even if they would be comparable the excretion periods would be similar, i.e. less than 5 days.

78. The FEI is aware of only a few cases of boldenone from meat contamination and, as stated during the Hearing, has verified this fact with WADA, which confirms that the majority of confirmed meat contamination cases include the presence of clenbuterol.

79. WADA only has three confirmed cases of where boldenone meat contamination was the most plausible source, amongst which the *Farah* and *Gomez* cases:

- *In the Farah case*: the athlete had asserted that the boldenone found in his system came from beef that he ate the night before sample collection. Further, the athlete had two negative samples, which were collected from him 10 and 15 days before the sample collection in question. In addition, detailed information about the ingested meat was also provided. This athlete could therefore prove that meat contamination was a plausible source. In the Appellant's case, the situation is very different, since he alleges that meat contamination occurred in Guatemala or El Salvador 19-23 days before the sample collection.

- *In the Gomez case*: the athlete had tested negative 14 days before the sample collection in question, which could rule out injection of boldenone by the athlete.

80. The FEI has no information of any prior negative tests of the Appellant. A deliberate injection of boldenone or oral intake of pro-hormones of boldenone can therefore not be ruled out. Contrary to the *Farah* and *Gomez* cases, in the present case, there are no

negative tests close to the sample collection, which was crucial for the scientific conclusions in both the *Farah* and *Gomez* cases.

81. Professor Ayotte concludes in her third statement that she considers it "as highly unlikely that the consumption of contaminated meat 19 to 22 days earlier is a reasonable scenario. The negative hair test does not permit to conclude otherwise". Hence the FEI concluded that the Appellant has failed to provide detailed facts and scientific evidence which can establish that the source of his AAF is the result of ingestion of contaminated meat.

82. *On the alleged transdermal transmission*, the FEI submits that (i) there was no evidence of medical record of the military horses, but an excel sheet, created on the day of the submission before the FEI Tribunal, (ii) the submitted explanations were not supported scientifically and (iii) no correlation can be drawn between transdermal transmission and studies related to intramuscular injections or oral administrations.

83. *On the alleged departure from the doping control procedure*, no concerns were raised by the Appellant regarding the sample collection process in front of the FEI Tribunal, they were only raised in the CAS Appeal. While this new argument is not precluded, the FEI notes that the Appellant stated on the Doping Control Form "*no comments*" on the process. In addition, the Appellant does not point out to any specific violation of the WADA Urine Sample Collection Guidelines that are, in any event, meant as best practices recommendations and are not mandatory. The FEI nonetheless answered the Appellant's arguments in its Answer and concluded that the Appellant (i) failed to establish any kind of departure of any procedure and (ii) that such alleged departure could reasonably have caused his AAF.

84. *On the alleged transmission by a contaminated faucet in the bathroom of the doping control station:* at the Hearing, the FEI rejected the plausibility of this suggestion by the Athlete for another potential source of contamination, underlying that there was no element to establish that the faucet or any other surface would be contaminated by boldenone, and that the risk of the boldenone going from the hands of the Athlete into the collection vessel appeared to be inexistent. Professor Ayotte, when asked during the Hearing, also excluded that these quantities could lead to a positive finding of boldenone in the amount detected by the Laboratory.

85. Finally, regarding the argument related to the negative hair analysis, the FEI strongly disagrees with the Appellant's argument that the negative hair test excludes deliberate injection of boldenone since only long-term use of anabolic steroids would be detected in hair. A single injection of boldenone or micro-dosing of boldenone over extended period of time cannot be ruled out only because of a negative hair test. In fact, the FEI has seen in several anti-doping cases both for human and equine cases, and Professor Ayotte also concludes in her expert reports, that hair test appears to be able to detect only massive and repeated use of anabolic steroids, and not a one-time shot of injection or long term use of low levels of micro-dosing of anabolic steroids.

86. In conclusion, the FEI submits that the Appellant has failed to establish, on a balance of probability, how the boldenone entered his system. Neither of the submitted explanations provides a plausible scenario, and the FEI therefore finds it extremely unlikely that the positive finding of boldenone in the Appellant is a result of any of the provided explanations.

i. FEI's Submissions on the Appellant's plea of lack of intent and no fault or negligence

87. The WADA Code has an initial phase in Article 10.2 of classifying a violation as intentional or not intentional. There are two phases for determining a basic sanction:

- in a first phase, the panel is asked to distinguish between intentional and non-intentional violations;

- if the violation is not intentional, the panel then considers the fault-related reductions in the second phase.

88. In cases of non-specified substances prohibited at all times (like boldenone), a four-year period of ineligibility is imposed, unless the athlete is able to establish that the violation is not intentional. Hence, here, in order to be able to benefit from any reduction of the four-year sanction, the Appellant would need to prove that the violation was not intentional. Another way of doing this is to prove that the athlete bears no significant fault or negligence for such rule violation and that there would be sufficient corroborating evidence that the ADRV was not intentional. In order to establish no significant fault or negligence, it is necessary to establish how the prohibited substance entered his system. The period of ineligibility would thus be two years, instead of four years.

89. Although the ADRHA (Articles 10.2.1.1 and 10.2.3) do not refer to a need to establish the source of the AAF and it is not a strict precondition of a finding that the athlete did not act intentionally, it will only be in exceptional cases that an athlete is found not to have acted intentionally if he/she cannot actually show the source of the substance.

90. CAS case law on intent also tends to confirm that it is necessary to establish the source of the substance in order to be able to evaluate both intent and fault of an athlete. The FEI submits in this context that the Appellant must provide clear and convincing evidence that proves how the boldenone entered his system, in order for the Panel to assess the level of the intent and the fault or negligence for the ADRV. However, since the Appellant has failed to establish how the boldenone entered his system, he has subsequently also failed to prove that the violation was not intentional and that he was at no (significant) fault or negligence for his rule violation.

91. Should the Panel not agree with the FEI that the Appellant has failed to establish the source and/or failed to establish the lack of intent, it is necessary for the FEI to express its opinion on the fault and negligence for the ADRV. The FEI recalls that it is the athlete's personal duty to ensure that no Prohibited Substance is present in his/her body.

For no fault or negligence to apply, pursuant to the definition of no fault or negligence (Appendix 1 ADRHA), the Athlete has to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used a Prohibited Substance.

92. Here, in the FEI's opinion, the Appellant disregarded the risk involved by handling boldenone, a prohibited substance for both human and horses. He has explained his extensive knowledge of boldenone, how he purchased a product that contained boldenone, possessed boldenone and travelled from one country to another with such product and injected several horses with boldenone. The Appellant did all this, regardless of the risks it involved. The FEI is of the strong view that such behavior is highly at fault, since it entailed significant risks that could cause an anti-doping rule violation.

c. Costs

93. Given the particular circumstances of this case, and where the Appellant is pursuing his Appeal on various unsubstantiated grounds, the FEI considers it appropriate to ask the CAS to order the Appellant to pay a contribution towards the FEI's costs incurred in these proceedings. The FEI had extensive costs incurred, since it had to consult with external scientific experts, in order to comment on the various expert reports submitted by the Appellant.

94. Further, whereas under Article R65.3 CAS Code the CAS has power to order a party to contribute to the costs of the proceedings before the CAS, the rule is clear in saying that a contribution of costs may be granted to the prevailing party.

95. However, the Appellant has asked that a contribution be made to his legal fees and costs regardless of the outcome of the case. The FEI submits that this is not something that is within the jurisdiction of the Panel to do. To the contrary, the FEI believes that the Appellant should not prevail with the majority of his arguments and claims and accordingly the FEI therefore rejects any order of contribution towards the Appellant's costs.

96. As to the costs of the CAS proceedings, given the important public interest in ensuring sports federations are not deterred from enforcing their anti-doping rules rigorously, the FEI submits that no costs should be awarded against it even if the Appeal is upheld.

V. JURISDICTION

97. The jurisdiction of the CAS, which is not disputed by the Parties and which was confirmed by the signature of the Order of Procedure, derives from Article R47 CAS Code and Article 13.2.1 ADRHA.

98. It follows from Article R47 CAS Code that:

"*[a]n 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.*"

99. Pursuant to Article 13.2.1 ADRHA, "*in cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS*". [emphasis added]

100. Article 13.2.3 ADRHA provides that "*in cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed*".

101. The Athlete is the subject of the decision being appealed and was participating in an event in Spruce Meadows, Calgary, Canada, an International Event.

102. The Panel therefore finds that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

103. Article R49 CAS Code provides that the time limit for appeal is twenty-one days from the receipt of the appealed decision. This time limit applies only if the statutes or regulations of the relevant federation do not contain a time limit of their own.

104. In this case, Article 13.7.1 ADRHA provides for the same time limit in the following terms: "*the time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.*"

105. Mr. Santana submitted his Statement of Appeal on 16 May 2019, *i.e.*, within twenty-one days of the notification of the Appealed Decision dated 25 April 2019, and thus within the twenty-one-days' time limit set out at Article 13.7.1 ADRHA. The appeal complied with the other requirements of Article R48 CAS Code. The admissibility of Mr. Santana's appeal is not challenged by FEI.

106. Therefore, the Panel confirms that the appeal is timely filed and admissible.

VII. APPLICABLE LAW

107. According to Article R58 CAS Code:

"*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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision." [emphasis added]

108. In accordance with Article R58 CAS Code, the provisions of the FEI rules and regulations which could be relevant to this case are as follows:

- The FEI Anti-Doping Rules for Human Athletes (the "ADRHA"), effective 1 January 2015;
- The FEI Statutes (the "FEI Statutes"), 23rd edition, effective 29 April 2015;
- The FEI General Regulations (the "FEI General Regulations"), 23rd edition, 1 January 2009, updates effective 1 January 2018;
- The Equine Anti-Doping and Controlled Medication Rules (the "EADCMR"), effective 1 January 2018.

109. WADA Documents referred to in the FEI Rules may also be relevant, in particular:

- The WADA Prohibited Substance List 2018, effective 1 January 2018;
- The WADA International Standard for Testing and Investigation (the "ISTI");
- The WADA Urine Sample Collection Guidelines.

110. Thereafter, pursuant to Article 39 of the FEI Statutes, the CAS as an independent court of arbitration, shall judge all appeals properly submitted to it against decisions of the FEI Tribunal. The seat of the CAS is in Lausanne, Switzerland, and proceedings before the CAS are "*governed by Swiss Law*" (FEI Statutes, Article 39.4).

111. As a clear choice-of-law clause is included in the FEI Statutes and therefore agreed between the Parties, the Panel shall decide the matter according to Swiss law.

112. The Panel therefore finds that the law applicable to the present dispute shall be the FEI rules, the WADA documents and, subsidiarily, the laws of Switzerland.

VIII. MERITS

113. The Panel sets out below the scope and sequence of its review (**A.**) followed by its decision on the Appeal of Mr. Santana (**B.**).

A. Scope and Sequence of the Panel's Review

114. According to Article R57 CAS Code, "*[t]he 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*". [emphasis added].

115. The Panel will thus conduct a *de novo* review of the present dispute within the scope set out below of Mr. Santana's Appeal.

116. Mr. Santana indicated in his Appeal Brief that his appeal is directed at the FEI Tribunal's Appealed Decision of 25 April 2019.

117. As noted in para. 65 above, Mr. Santana's appeal seeks to (1) set aside the Appealed Decision in relation to all sanctions imposed therein on him as a result of an ADRV, so that those sanctions are annulled or (2) reduced.

B. The Panel's Decision

118. The Panel sets out the criteria, burden and standard of proof applicable in determining whether the ADRV was intentional pursuant to Article 3.1 ADRHA (a.) before applying the same to the case at hand (b.) and settling the corresponding sanction (c.).

a. Criteria and Standard and Burden of Proof under Article 3.1 ADRHA

119. Article 2.1 ADRHA provides that "*[t]he Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*" is an ADRV and Article 2.1.1 ADRHA states that:

> "*[i]t is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. 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*" [emphasis added].

120. Article 3.1 ADRHA makes clear that:

> "*[t]he FEI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the FEI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability*" [emphasis added].

121. Hence, the FEI has the burden of establishing that an ADRV has occurred under Article 3.1 ADRHA "*to the comfortable satisfaction of the hearing panel*". In addition, pursuant to Article 2.1.1 ADRHA, it is not necessary to demonstrate any intent, fault, negligence or knowing use on the Athlete's part. In other words, it is a strict liability offence that is established simply by proving that a prohibited substance was present in the athlete's sample.

122. In terms of sanction, Article 10.2.1.1 ADRHA provides that an athlete who violates Article 2.1 ADRHA and where the rule violation does not involve a Specified Substance, is subject to a period of ineligibility of four (4) years, unless the athlete can establish that the anti-doping rule violation was not intentional. In other words, when a non-specified prohibited substance such as boldenone is found in an athlete's sample, the ADRHA states a presumption that it was used or administered deliberately in an illicit attempt to enhance his performance.

123. If an athlete establishes lack of intent, then the period of ineligibility is two (2) years; the ineligibility could even be eliminated if the athlete establishes lack of intent and no fault and/or no negligence (see below at §128).

124. The term intentional is defined at Article 10.2.3 ADRHA as follows:

"*[T]he term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she 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.*"

125. It is therefore for the athlete charged with an ADRV involving a non-specified substance to demonstrate that the ADRV was not intentional, on a balance of probability pursuant to Article 3.1 ADRHA. This standard of proof is not contested by the Parties and is also accepted by the Panel.

126. Articles 10.2.1.1 and 10.2.3 ADRHA, read together, do not provide that, to discard "intent", the source of the prohibited substance, here boldenone, must be identified by the athlete. However, in practice, the Panel notes that CAS case law rarely departs from this principle, or CAS panels require that, to conclude that an athlete did not act intentionally without the athlete having prior established the source of the AAF, certain precise and exceptional circumstances exist.

127. There is therefore a possibility for an athlete to avoid having his or her ADRV be held intentional under Article 10.2.3 ADRHA in cases where the origin of the prohibited substance cannot be established, subject to the athlete's meeting his burden of proof on a balance of probability that the ADRV was not intentional. In such case, the sanction could be reduced to two years.

128. Moreover, pursuant to Article 10.4 ADRHA, "*[i]f an Athlete [...] establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated*".

129. In contrast with Articles 10.2.1 and 10.2.3, the definitions of "*No Fault or Negligence*" and "*No Significant Fault or Negligence*" at Appendix 1 ADRHA explicitly require the athlete to establish the origin of the prohibited substance to benefit from an elimination or reduction of the otherwise applicable ineligibility period. This is logical to avoid any

speculation as it would be difficult for any athlete to establish lack of negligence and/or fault to commit an ADRV if they cannot establish the source of the substance.

130. The Athlete stated in his written submissions and at the Hearing that the probatory threshold he had to satisfy in identifying the source of boldenone was the balance of probability meaning that it was marginally more likely to have occurred than not. The Panel agrees with this threshold, the demonstration at just over 50% of the likelihood or chance of it having occurred of the alleged source would be enough.

131. In summary, to evade the standard four (4) year period of ineligibility, Mr. Santana must demonstrate that such period of ineligibility should be (i) eliminated based on no fault or negligence or (ii) reduced based on no significant fault or negligence under Article 10.5.2 ADRHA. In both cases, the Athlete must be able to establish the lack of intent.

b. Application

132. As a preliminary remark, the Panel recalls that it has full power to review the facts and law pursuant to R57 CAS Code (*de novo* review).

133. **On the ADRV** - The Panel is comfortably satisfied that the FEI established that an ADRV has occurred under Articles 2.1 and 3 ADRHA. The results of the analysis by the Laboratory of the A and B Samples confirmed the presence of boldenone in the Athlete's system and they constitute sufficient proof of the violation of Article 2.1 ADRHA. In addition, the Panel notes that the Athlete did not dispute the presence of boldenone in his Sample and has admitted the ADRV.

134. Consequently, the period of ineligibility for the Athlete provided for under Article 10.2 ADRHA is four (4) years, unless the Athlete is able to provide that the violation was not intentional. As explained above, the standard of proof that the Athlete has to satisfy is the balance of probability.

135. **On the intention or lack thereof** - The Panel notes that while it is not mandatory, the establishment of the source of the prohibited substance is critical to evaluate intent or rather, the lack of intent or fault or negligence from the athlete. Therefore, the first question that the Panel must address is whether the Athlete in this case established, on a balance of probability, the source of the boldenone found in the Sample.

136. As already stated by the Panel during the Hearing and established by consistent CAS jurisprudence, a mere statement or speculation is insufficient. Mr. Santana must prove the facts which support the four potential scenarios of his contamination on the balance of probability standard that he put forward.

137. As explained in paras. 66 ff above, Mr. Santana contends that his ADRV probably resulted from four potential scenarios:

(i) the consumption of meat contaminated by boldenone in Guatemala or El Salvador 19 to 23 days prior to the Sample being collected at the Event;

(ii) the transdermal contamination by boldenone while injecting non-FEI registered horses in El Salvador;

(iii) the contamination of his Sample during the sample collection process that departed from the WADA standards; and

(iv) the contamination of the Sample by the Athlete touching a contaminated faucet (or another surface) in the bathroom that was used by the Athlete next to the Doping Control Station at the Event.

138. The Panel analyzes below, one by one, the four scenarios considered by the Athlete in order to find if the latter succeeded in establishing, on a balance of probability, the source of the boldenone.

139. As regards the meat contamination scenario, Mr. Santana was expected to establish that he consumed contaminated meat during the relevant period, namely prior him being tested at the Event on 9 June 2018. Mr. Santana had thus to establish precisely when and where he consumed the suspected meat and the reasons why this meat could be subject to contamination by boldenone. With these elements, Mr. Santana was expected to establish that it is more likely than not that this contaminated meat was the source of the boldenone found in the Sample, i.e. on a balance of probability.

140. Mr. Santana contends that he had lunch and dinner at the local farms in Guatemala and El Salvador "*where he voluntarily gives educational clinics for the development of his sport in poor areas*" and he consumed red meat possibly contaminated by boldenone in the period preceding the in-competition testing at Spruce Meadows. However:

(i) Mr. Santana brought no evidence of this to the Panel's attention, not even an affidavit from the farmers providing the meat in Guatemala or the Regimen hosting him in El Salvador. Mr. Santana merely stated that "*because my periodic visits to these countries involve no monetary compensation, we end up eating their typical/local food as a form of group dynamic*". However, the statement that he ate "*typical/local food*" does not necessarily prove that Mr. Santana ate meat instead of poultry or any other fish or vegetarian dish and it proves even less that this typical/local food might have been contaminated by boldenone. In other words, there was no witness testimony on the record as to what Mr. Santana precisely consumed during his stay in Guatemala or El Salvador, even though he was not alone during his volunteering visits; this is not even mentioning the vagueness of the places where Mr. Santana ate and which meals were concerned;

(ii) In the parts of the submissions where Mr. Santana uses more precise statements such as the involuntary contamination came from "*pork and beef that he was served in Guatemala*", and "*the employees of the farm served lunches that were abundant in pig and beef meat*", these statements are still not helpful to establish his case as they are mere statements and no employee of the farm was able to testify that meat was indeed served to Mr. Santana and the origin of this meat;

(iii) During the Hearing, counsel for the Athlete insisted on the fact that the part of the animal one eats is important as the steroids will be distributed differently and thus would be excreted differently (as the dose present in the consumer's body would be different). However, the Athlete did not give sufficient details – and *a fortiori* evidence – on the parts of the animal that were allegedly eaten by Mr. Santana during his stay in Guatemala or El Salvador;

(iv) On the likelihood of the meat he was supposedly served being contaminated, Mr. Santana referred to a university paper showing that 47% of the pork meat in southwest Guatemala from certified slaughterhouses was contaminated with boldenone. However, this paper is limited to the southwest part of Guatemala, does not deal with beef and even if one looks at the conclusions for pork, the probability of it being contaminated is less than 50%. This is insufficient to infer that Guatemala (and even less El Salvador) suffer from meat contamination, *a fortiori* for purposes of proving causation, as incumbent on Mr. Santana. In addition to this university paper, Mr. Santana only stated that "*in the poorest zones, [...] controls are lax, and local markets kill those animals at their convenience to sell to the public before the meat is free of the presence of this drug*". This, again, is a mere statement with no probatory value;

(v) Mr. Santana's expert, Dr. Graham, speculates that the contamination could have resulted from consumption of meat as he ruled out the deliberate injection of boldenone using the elimination half-life of boldenone analyzed together with the Athlete's negative hair test a month after the AAF, but has not based any analysis on concrete evidence from the Athlete as to the meat allegedly consumed;

(vi) Mr. Santana also provided a paper on how long boldenone remains detectable in horses which the Panel finds irrelevant in the case of human contamination as one cannot compare an animal's system with a human athlete's system, in particular between a vegetarian system and an omnivore system; Dr. Graham also conceded during the Hearing that there are no studies on the length of time that boldenone will remain in the human system following the ingestion of contaminated meat.

141. The Panel notes that no serious efforts were made by Mr. Santana to collect documentary evidence to prove what he consumed. The only evidence provided to the Panel are his flight tickets showing that he travelled to Guatemala and El Salvador on 17 and 20 May 2018, 20 days before his test. However, a plane ticket does not give any details as to the food eaten during his stay in these two countries.

142. As to the testimonial evidence adduced by Mr. Santana during the Hearing, it consists of witness testimony provided by his wife, Mrs. Santana and a former student of his, Ms. Senger. Mrs. Santana's and Ms. Senger's statements are general and do not bring any more solid grounds to the Athlete's case as they only made general statements such as "*my husband is a meat lover*", "*Mr. Santana is a tough guy, he does not take medicines even for an ankle injury*".

143. Regarding expert's evidence, the Panel is not convinced by the argument that the negative hair-test of Mr. Santana supports the exclusion of voluntary ingestion of boldenone, for the reasons put forward by Professor Ayotte, i.e. that hair would reveal only a long term / repeated ingestion of boldenone and not limited use. Accordingly, and contrary to Dr. Graham's assertion, the negative hair test does not exclude use of boldenone.

144. Overall, the Panel must share its astonishment at the fact that an athlete such as Mr. Santana, with a successful business largely based on his reputation as a professional equestrian with a clean track record, assisted by two different legal teams throughout the proceedings (before the FEI Tribunal and the CAS), who claims that his ADRV resulted from consumption of meat and knowing that his professional career and related business were at stake, did not engage in further efforts to, at least, try to bring details and evidence in support of his meat contamination scenarios. This stands in sharp contrast to the cases on which he relies, namely the *Gomez* and *Farah* case, where the panels held that the athletes had done as much as could be expected of them; the Panel also notes that, in both CAS cases, the athlete had eaten meat very close to the day their samples were tested, not 20 days before, which is consistent with the evidence provided by Professor Ayotte.

145. The Panel concludes that the Appellant failed to establish, on the balance of probability, that the AAF was caused by the ingestion of contaminated meat.

146. As regards the transdermal contamination scenario, the Athlete states that the ADRV might have resulted from accidental skin contact with boldenone which happened when the Athlete treated non-FEI registered military horses with boldenone at the direction of Dr. Onofre when the Athlete visited the Regiment in El Salvador on 21 May 2018.

147. The Panel finds that this scenario is highly unlikely as the Athlete has failed to substantiate it by any scientific evidence. The attitude of the Athlete at the Hearing, who simply did not even seriously plead that assumption, confirms that there is in the record very limited support for this hypothesis. As for the experiment described in Professor Ayotte's second report and contested by the Appellant, the Panel does not need to address it as it would have arrived to the same decision without this experiment.

148. Hence, the Athlete has failed to establish on a balance of probability that the presence of boldenone in the Sample was caused by skin contact with the Prohibited Substance when he injected it into military horses in El Salvador.

149. As to suspected flaws in the doping control process: in addition to the written submissions, a significant part of the Hearing was dedicated to the examination of the doping control process, and the cross-examination of the DCOs, Mrs. Deborah Hawkins and Mrs. Nicki Gardiner, who were present at the Event. The purpose of the Appellant was to support his allegation of a deeply flawed process at the Doping Control Station and thereafter. The way the Doping Control Forms were filled, and corrected for one of them, the location of the bathroom where samples were taken, whether the bathroom was dedicated to athletes being controlled, whether the entry of the bathroom was visible

from the Doping Control Station, the organization of the room, together with the location of the Doping Control Station itself within the building at the Event were described at length. The chain of custody of the Sample was also discussed, from the bag where the A and B Samples were transported to the fridge of the DCO, Mrs. Hawkins, where they were stored until they were handed over to FedEx and sent to the Laboratory.

150. However, while the Panel remarked certain inconsistencies in the recollection of the DCOs regarding the date on which the A and B Samples were deposited and/or picked up by FedEx, and the lack of clarity of the reasons why one Doping Control Form had been corrected, none of the elements brought to the attention of the Panel could have resulted in the deterioration or loss or confusion in the A and B Samples and therefore in the AAF. Moreover, when asked during the Hearing if someone had an interest to tamper with his Sample, Mr. Santana answered "*no*"; he only added that the sabotage might have occurred after the sample collection process but was unable to give any further details but this mere assertion. In fact, at the Hearing, the Athlete himself admitted that these deviations from the WADA standard procedures remained formalistic and that he could not draw a logical link between them and the AAF.

151. The Panel thus again finds that the AAF could not be explained on the balance of probability, by the Appellant's criticism of the doping control process.

152. As regards the contamination by touching a contaminated surface, most likely the faucets, during the sample collection process: at the Hearing, Mr. Santana suggested that, while in the bathroom to collect his urine, he touched the faucets, the soap, the paper towel, and the toilet service with his hands and that when trying to urinate into the sample collection vessel, he involuntarily urinated on his contaminated hands; by doing so, the urine dribbled from his hands in the sample collection vessel and, as his hands had touched a surface contaminated by boldenone, it caused the AAF.

153. As to this, the Panel first recalls that:

(i) This was the first time at the Hearing that this hypothesis of contamination during the sample collection process was raised; it had not been mentioned before the FEI Tribunal;

(ii) On the DCF, the Athlete stated "*no comments*" on the process and when asked by the Panel during the Hearing, the DCO in charge of his sample collection also confirmed that she did not recall the Athlete making any comments;

(iii) The plausibility of the urine going over the hands prior to dropping in the collection vessel (against gravity?) is limited;

(iv) Even if the Panel accepts that the highest precautions to ensure a sterile environment were not taken (notably since the bathroom was not privatized), Mr. Santana has not established why there would be surfaces contaminated with boldenone in this bathroom (knowing that no one else was tested positive to boldenone during the

Event), and how a contamination of the environment passed onto the hands of the Athlete and then in the collection vessel could justify the 3 ng/ml of boldenone found in the Sample;

(v) When asked to Dr. Graham and Professor Ayotte at the end of their respective testimonies about this scenario, they both replied that the necessary quantity of boldenone on the contaminated object, for example the faucets, had to be very high to result into the concentration level found in the Sample; all the more since not all the amount of boldenone on the faucets could be transferred on the hands, then from the hands to the urine and finally to the collection vessel; all of this is making this scenario "*highly unlikely,*" if not impossible.

154. In light of the foregoing, the Panel considers that the Athlete has failed to establish on a balance of probability that the Sample was contaminated during or after the sample collection process by the Athlete touching a contaminated surface.

155. Overall, the Panel recalls that it is not required to and does not purport to eliminate the possibility that Mr. Santana's ADRV may be the result of one of these scenarios, but still concludes that Mr. Santana has not been able to meet his burden of proof to establish the same on a balance of probability, for the purpose of establishing that the ADRV that he committed was unintentional pursuant to Article 3.1 ADRHA.

156. Were there particular circumstances justifying the application of a reduction or elimination of the sanction? For no fault or negligence to apply, pursuant to the definition of in Appendix 1 ADRHA, the Athlete has to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used a Prohibited Substance.

157. Here however, the Appellant disregarded the risk involved by handling boldenone, a prohibited substance for both human and horses.

158. The Athlete, a high-level professional equestrian with a successful business in the same field, with extensive experience with treating horses and knowledge of prohibited substances, knew that boldenone was a Prohibited Substance and he confirmed his awareness during the Hearing. The Panel remains astonished by the risk the Athlete knowingly took when handling boldenone and travelling with it from Guatemala to El Salvador and then injecting it, without gloves as he claims skin absorption, into non-FEI-registered horses; the Athlete ought to have known that possessing boldenone could have potential consequences under the FEI rules, despite the substance being legal in El Salvador, and potentially that he could be contaminated.

159. Regarding the hair test, which, according to the Athlete, would necessarily exclude a voluntary ingestion of boldenone, the Panel considers that (i) its probative value is controversial in the context of an ADRV, and that the hair test result cannot exclude the intentional use of boldenone but could, at most, suggest that Mr. Santana was not ingesting that substance over a longer time frame. The Panel does not find the hair analysis results to be particularly helpful for the Athlete's case as the Panel understands

from Professor Ayottes' and Dr. Graham's testimonies that a hair test allows to detect long-term use of anabolic steroids and not one-time injections/ingestions or micro-dosing or pro-hormones.

160. Taking all potential sources advanced by the Athlete into consideration, the Panel accepts Professor Ayotte's opinion that the Athlete's explanations of how the boldenone entered his system was "*extremely unlikely*". The Athlete was required to prove that it was marginally more likely than unlikely that the boldenone was absorbed through his skin into his bloodstream, or that he was contaminated by eating meat, or that his sample was contaminated during the sample collection process.

161. The Panel thus finds that the Athlete did not establish the source of the boldenone found in his Sample and further that the Athlete failed to establish that the violation of the ADRHA was not intentional.

162. For the sake of clarity, the notion of intent does not require a repetitive use of the prohibited substance. Pursuant to Article 10.2.3 ADRHA, the term intentional requires that the Athlete behaved in a manner which he knew constituted an anti-doping rule violation or knew that there was a significant risk that his conduct might result in an ADRV and manifestly disregarded such risk. In his letter to the FEI's counsel, sent right after receiving the notification letter, the Athlete stated that he knew that boldenone was in the list of forbidden drugs for athletes. Although in this case intentional use of boldenone cannot be ruled out for the above-mentioned reasons, the Athlete *a minima* engaged in a conduct or adopted a behavior which he very well knew carried a significant risk.

163. Hence, the Panel considers that the Athlete has not provided clear and convincing evidence that prove how boldenone entered his system. The Athlete has not provided an explanation that is plausible, on a balance of probability, and failed to establish a plausible link between the positive finding and either of the four potential contamination sources alleged by the Athlete.

164. The Panel thus finds that the ADRV committed by Mr. Santana to be treated as intentional for purposes of Article 10.2 ADRHA. The Panel also finds that the Appellant did not bring any evidence that would support a finding of no fault / no negligence under Article 10.4 ADRHA.

C. Sanction

165. As per Article 10 ADRHA, the standard ineligibility sanction is a four-year period. As Mr. Santana failed to demonstrate that the ADRV was not intentional, the applicable sanction shall be four (4) years. As stated above, no element supporting a reduction or elimination of the ineligibility period has been found.

166. Mr. Santana serves a period of ineligibility since 11 July 2018 and is therefore eligible for credit from 11 July 2018 to the date of this Award. Considering that the period of

ineligibility is being served without any interruption so far, the start date of Mr. Santana's four-year period of ineligibility shall be backdated to 11 July 2018.

167. As per Article 9.1 and 10.8 ADRHA, assuming there were any, Mr. Santana shall also be sanctioned with disqualification of the results obtained in the competition in which the violation occurred, as well as any other competitive results of Mr. Santana obtained from the date the positive Sample was collected i.e. 9 June 2018 through the commencement of the provisional suspension i.e. 11 July 2018, if any. Such disqualification shall result in forfeiture of any medals, points and prizes related to such results.

168. The Athlete was also fined 4,000 CHF by the FEI Tribunal. In that regard, the Panel examined the reasonableness of the sanction, or, stated differently, the proportionality of the sanction to the committed offense under Article 10.10 ADRHA. Here, the Panel confirms this sum appears to be reasonable, if not modest, in light of the procedure, the offense and the debate between the Parties. The Panel accordingly sees no reason to modify the sanction decided by the FEI Tribunal.

IX. COSTS

169. Article R65 CAS Code pertaining to costs states as follows:

> "*R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body.* [...]
>
> *R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by CAS.*
>
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.– without which CAS shall not proceed and the appeal shall be deemed withdrawn.* [...]
>
> *R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

170. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Appellant with the filing of his Statement of Appeal, which is in any event retained by CAS.

171. The Appellant requests the Panel to order the Respondent to pay all expenses inherent to the current proceeding and to reimburse the Appellant for the amount paid towards arbitration costs, legal fees and expenses incurred in connection with the current proceeding.

172. The Respondent stated that given the Appellant pursued his Appeal on various unsubstantiated grounds, it is appropriate to ask the CAS to order the Appellant to pay a contribution towards FEI's costs incurred, since it had to consult with external scientific experts, in order to comment on the various different expert reports submitted by the Appellant. In response to the Appellant's request, the FEI submitted that it is not the role of the FEI to provide financial support to those who have admitted violating FEI Rules and Regulations.

173. In this regard, the Panel notes that, although the Respondent was represented by in-house Counsel and thus did not incur any legal fees, it had to hire scientific experts to rebut the expert reports filed by the Appellant. Taking into consideration the outcome of this arbitration and R65.3 CAS Code, the Panel finds that the Appellant *i.e.* the unsuccessful party shall reimburse the amount of CHF 3,000 to the Respondent.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1) The appeal filed by Mr. Paulo Sergio Mateo Santana Filho on 16 May 2019 against the decision rendered by the FEI Tribunal dated 25 April 2019 is dismissed.

2) The decision rendered by the FEI Tribunal dated 25 April 2019 is confirmed in its entirety.

3) The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Appellant, which is retained by the Court of Arbitration for Sport.

4) Mr. Paulo Sergio Mateo Santana Filho's request for an order that the Fédération Equestre Internationale make a contribution towards the costs he has incurred in making the Appeal is dismissed.

5) Mr. Paulo Sergio Mateo Santana Filho is ordered to pay CHF 3,000 (three thousand Swiss francs) as a contribution towards the expenses incurred by the Fédération Equestre Internationale in defending this appeal.

6) All other or further requests or motions for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 10 June 2021

THE COURT OF ARBITRATION FOR SPORT

Carine Dupeyron
President of the Panel

The Hon. Bruce W. Collins, QC
Arbitrator

Markus Manninen
Arbitrator