

**DECISION of the FEI TRIBUNAL
dated 26 March 2020**

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE (“the FEI”) or “Claimant”

vs.

Ms. Ellen OLSON and Mr. Jeremy OLSON

“Respondents”

together “the Parties”

I. COMPOSITION OF PANEL

Mr. Martin Gibbs, one member panel

II. SUMMARY OF THE FACTS

1. Case File: The Tribunal duly took into consideration the Parties’ written submissions and communications received to date.

2. Oral Hearing: none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 29 April 2015 (“**Statutes**”).

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018 (“**GRs**”).

Internal Regulations of the FEI Tribunal, 3rd edition, effective 2 March 2018 (“**IRs**”).

Veterinary Regulations (“**VRs**”), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

2. The relevant Legal Provisions

Statutes Article 38: "Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matters not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- (i) Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behavior, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event; (...)"

GRs Article 163.9: "Notwithstanding anything to the contrary, the FEI, at its sole discretion, may open a disciplinary case against a person(s) in the event that conduct brings equestrian sport, and the FEI in particular, into disrepute and/or in the case of match fixing, betting, bribery and/or corruption and/or in the case of an Abuse of a Horse and/or in the case of any other breach of the FEI Rules and Regulations without the payment of a deposit."

GRs Article 169.6.4:

"Acts defined as criminal by the relevant national law, fraud of any kind, and violence shall entail a fine of CHF 1,000.- to 15,000.- and/or a Suspension of a minimum of one (1) month up to life."

IRs Article 18.1: "In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations. The FEI Tribunal also has jurisdiction to decide upon cases referred to it by the Independent Election Committee in accordance with the process set out in the Code of Conduct for FEI Elections."

VRs Article 1002: Vaccinations and Infectious Diseases

1. "All laboratory tests performed for infectious disease testing, particularly those required by government legislation, must be recorded in the Passport.
2. All Horses entering the FEI Stables Area and/or participating in FEI Events must be vaccinated against equine influenza, according to Article 1003."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. 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. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 The Respondents were both registered with the FEI at the time of the alleged incidents: Ms. Ellen Olson – FEI ID: 10034699; and Mr. Jeremy Olson – FEI ID: 10028710.
- 1.2 Ms. Ellen Olson is the Owner of the Horse Shes High Maintenance (FEI ID: 105YT03). She was as well the Horse's registered Trainer. Ms. Ellen Olson was the Owner of the Horse Noslos Tuff Enuff (FEI ID: 105YQ47) between 14 February 2018 and 11 March 2019. Ms. Olson was the Horse's registered Trainer. The Horse has since changed ownership.
- 1.3 Mr. Jeremy Olson was the registered Trainer for both the aforementioned Horses between 1 January 2018 and 31 December 2018.

2. Procedural Background

- 2.1 On 16 July 2019, the FEI notified the Respondents via a Notification Letter of the opening of disciplinary cases against the Respondents due to alleged falsification of vaccinations in the passport of two FEI registered horses (the "**Horses**"). The Notification Letter was sent to the Respondents through the USA-NF by email and the hardcopies via UPS courier post, which delivery was confirmed on 29 July 2019.
- 2.2 On 24 February 2020, and in the absence of any response by the Respondents, the FEI submitted its Claim to the FEI Tribunal.
- 2.3 On 27 February 2020, the FEI Tribunal Chair nominated a one member panel for the present case, and granted the Respondents once more with the opportunity to provide written submissions with regard to the allegations. However, no submissions were received by the Tribunal within the deadline provided.

3. Burden and standard of proof

- 3.1 The burden and standard of proof – pursuant to Article 32 of the IRs – is on the FEI to establish that the Respondents committed the alleged breaches (as outlined further below) to the comfortable satisfaction of the Tribunal.

4. Notification Letter and Claim by the FEI

Allegations:

- 4.1 To start with, the FEI submitted that on 13 December 2018, Dr. Katie Weigman DVM (now Merkes) (“**Dr. Merkes**”) reported to the FEI that an alleged forgery of vaccination entries had occurred. She further explained that veterinarian contacted her to confirm dates of vaccinations in the passport of the Horses, as the dates looked “fishy”.
- 4.2 Dr. Merkes has confirmed to the FEI Legal Department that the following entries in the Horses’ passports – copies of which were provided by the FEI - were not made by her and that her signatures were forged.
- a) FEI Passport of the Horse Noslos Tuff Enough: Four entries dated 15 October 2017, 18 November 2017, 13 May 2018 and 1 November 2018 were made in the *Vaccination record – Equine influenza only* section and four entries dated on the same days were made in the *Vaccination record – Diseases other than equine influenza* section.
 - b) FEI Passport of the Horse Shes High Maintenance: Three entries dated 15 October 2017, 18 November 2018 and 13 May 2018 were made in the *Vaccination record – Equine influenza only* section.

All aforementioned entries appear to be made and signed by Dr. Katie Weigman. The signatures are accompanied by the River Valley Vet Services stamp where Dr. Merkes was employed.

- 4.3 Dr. Merkes confirmed that the date of one of the entries was shortly after she went on maternity leave, so she was not working at the time, and not performing any vaccinations on horses. She further explained that several years ago, she ordered a new stamper with her clinic information on it and that the Respondents had picked up the stamper from her house to update the passports (the vaccines at that point had been given by Dr. Merkes), but the stamper was never returned to Dr. Merkes.
- 4.4 In addition, Dr. Merkes informed the FEI that a criminal investigation related to this matter had been opened at the Dubuque County Sheriff’s Office in Iowa and this was confirmed to the FEI Legal Department by the

Sheriff's Office.

FEI's position:

- 4.5 The FEI submitted that falsification of vaccination entries in the present case constituted fraud and was in addition defined as criminal by the relevant state law. The Respondents violated 169.6.4 of the GRs.
- 4.6 More specifically, with regard to fraud the FEI submitted that the FEI considered falsifying medical/veterinary information in the FEI passports as forgery which was one of the types of fraud. Forgery in the present case involved two FEI passports wherein veterinarian's signatures and vaccination entries have been falsified.
- 4.7 Pursuant to Article 1003 of the VRs, all horses entering the FEI Stables Area and/or participating in FEI events must be vaccinated against influenza. Although vaccination cannot guarantee immunity, it was a mandatory biosecurity practice required by the FEI to reduce the risk of circulating virus at events. The implicit reason behind the forgery of vaccination entries was to enable for the horse to compete in international competitions as all FEI passports are checked by the FEI Officials at the events to verify if the vaccinations requirements under the VRs have been fulfilled.
- 4.8 Vaccinations were therefore falsified with the intent to deceive an FEI Official to allow the Horses to take part in international competitions. After the vaccination entries were forged the Horses competed internationally: the Horse Noslos Tuff Enuff in five (5) events between 2 March 2018 and 14 December 2019, and the Horse Shes High Maintenance in six (6) events between 3 March 2018 and 28 February 2019.
- 4.9 The FEI further submitted that Dr. Merkes confirmed that the vaccination entries in question were not made by her and she believed the forgery was committed by the Respondents who had obtained her stamper. In addition, the passport of a horse was usually held by the owner of the horse or a trainer due to its importance. Both Respondents taking part in and benefiting from FEI activities, the FEI has the jurisdiction to prosecute the case as per Article 157 of the GRs and Article 2.6 of the Statutes. In addition, they have both made a relevant decision about the horse (falsifying its medical information) making them additional Person Responsible pursuant to Article 118.3 of the GRs. The FEI submitted that taking into account the totality of circumstances and the provided explanation with evidence the FEI was satisfied that the Respondents were responsible for the forged vaccination entries in the FEI passports.
- 4.10 In addition, the falsification of vaccination entries qualified as a criminal

offence by the relevant state law. The Respondents were residents of the State of Iowa and had a pending criminal charge for forgery of FEI and National Passports under the Iowa Criminal Code.

4.11 With regard to sanctions, and in taking into account Article 169.1 of the GRs, the FEI submitted that the actions in the present case involved fraud and that, the forgery was deliberate, *i.e.*, with the intent to deceive the FEI Officials and that it constituted criminal conduct under applicable laws. The FEI argued, that one might as well consider that not vaccinating a horse could potentially amount to maltreatment of a horse. Given the totality of circumstances of the present case, the FEI respectfully submitted that a six (6) months suspension should be imposed on the Respondents alongside with a 3,000 CHF fine each.

4.12 The FEI requested the following prayers for relief:

- i. upholding the charge that Ms. Ellen Olson and Mr. Jeremy Olson committed forgery;*
- ii. imposing a suspension of six (6) months on Ms. Ellen and Mr. Jeremy Olson, commencing as of the date of the final decision of the FEI Tribunal;*
- iii. fining Ms. Ellen Olson and Mr. Jeremy Olson each in the amount of 3,000 CHF.*

5. Further proceedings

5.1 Upon request by the Tribunal concerning the status in the criminal proceedings, the Sherriff's Office confirmed that on 14 February 2020 Ms. Ellen Olson appeared in court in Iowa and pleaded guilty to the aggravated misdemeanour of tampering with records and identity theft and received a 24 month deferred judgement. Mr. Jeremy Olsen, having been released on bail has subsequently failed to attend court and he is subject to an outstanding State of Iowa arrest warrant for tampering with records, forgery and identity theft.

6. Jurisdiction

6.1 The Tribunal finds that, pursuant to Article 38 of the Statutes and Article 18.1 of the IRs, it has jurisdiction to hear this matter. The jurisdiction of the Tribunal remains undisputed.

6.2 In addition, the Tribunal finds that the Respondents having been registered with the FEI as owners and trainers respectively at the time of the alleged conducts were bound by FEI Rules and Regulations. The fact that the Respondents were bound by FEI Rules and Regulations remains undisputed.

- 6.3 Furthermore, FEI Rules mandate the FEI to open disciplinary proceedings in cases like these, pursuant to Article 163.9 of the GRs.

7. Decision

- 7.1 The Tribunal, having taken into consideration all arguments, submissions and evidence by the Parties, considers that it has to decide the following:
- a) Whether the Respondent's actions amounted to any breaches of the FEI Rules and Regulations, and whether the FEI met its burden of proof.
 - b) If a) is established, decide on sanctions that are proportionate taking into account all circumstances of the case.
- 7.2 Based on a report by Dr. Merkes, the FEI alleges that the Respondents made veterinary entries in the Horses' Passports, as outlined in Article 4.2 of this Decision, used a stamp of Dr. Merkes' veterinary practices which was previously borrowed to them, and forged Dr. Merkes' signature for those entries. In addition, the vaccinations were falsified with the intent to deceit FEI Officials allowing the Horses to take part in international competitions. In fact, the Horses competed in several international events, as outlined in Article 4.8 of this Decision. The FEI submitted that the Respondents violated 169.6.4 of the GRs, by both committing fraud and a criminal offence as defined by the relevant state law.
- 7.3 To start with, the Tribunal notes that Dr. Merkes herself reported the alleged forgery of her signature, and provided explanations with regard to the stamp previously borrowed by the Respondents. In addition, the Tribunal notes that criminal proceedings for the same actions of the Respondents had been commenced in the State of Iowa, and as far as Ms. Ellen Olson had concluded with her admitting the charges of tampering with records and identity theft and pleading guilty to those charges. The disciplinary matters considered by the Tribunal are separate from these criminal proceedings and the Tribunal has made its decision on the basis of the facts and evidence before it.
- 7.4 In taking into consideration the evidence provided in the case at hand, the Tribunal is comfortably satisfied, as required under Article 32.2 of the IRs, that the FEI met the burden of proving that the Respondents made the respective entries in the Horses' passports and forged Dr. Merkes' signature, as well as used the stamp without authorisation.

Breach of Article 169.6.4 of the GRs?

"Acts defined as criminal by the relevant national law, fraud of any kind, and violence shall entail a fine of CHF 1,000.- to 15,000.- and/or a

Suspension of a minimum of one (1) month up to life.”

- 7.5 In this regard the Tribunal notes that Ms. Ellen Olsen pleaded guilty in state court in Iowa to the aggravated misdemeanour of tampering with records and identity theft and received a 24 month deferred judgement. Mr. Jeremy Olsen on the other hand was arrested, released on bail, and has since then not appeared in any of the court hearings. He has been charged with both tampering with records and identity theft (to which Ms. Ellen Olsen pleaded guilty), as well as in addition with forgery.
- 7.6 As a result, the Tribunal is comfortably satisfied that the case at hand concerns *“Acts defined as criminal by the relevant national law”*.
- 7.7 The Tribunal finds that the actions by the Respondents can also be considered as *“fraud of any kind”* within the meaning of Article 164.6.4 of the GRs. The actions of the Respondents were fraudulent in several ways and it is clear from the evidence submitted that the Respondents acted with intent. By entering vaccination records in the Horses’ passports, the Respondents deceived first and foremost FEI Officials, and thus the FEI since the FEI Officials are acting on the FEI’s behalf, with regard to the veterinary records of the Horses and as a result acquired entry requirements for the Horses’ in several international events. That said, their actions might have brought the welfare of the Horses, and potentially also the welfare of other horses competing at risk, since vaccination requirements are part of FEI’s biosecurity standards. Here the Tribunal also notes that one of the Horses changed ownership. While the Tribunal can only speculate in this regard, the new owner might have certainly also relied on the respective Horse’s passport to confirm that the vaccination requirements had been fulfilled. In this respect, the Tribunal finds that the FEI should assure that all fraudulent entries in the Horses’ passports are corrected and the relevant persons informed.
- 7.8 Furthermore, the Respondents’ actions were fraudulent in entering vaccination records without having requested or paid for any vaccinations, in abusing the stamp previously borrowed by Dr. Merkes for actions not authorised by her, and in forging her signature several times in the Horses’ passports.
- 7.9 The Tribunal also finds that the Respondents have shown the Tribunal no remorse whatsoever for their actions having failed to engage with these proceedings. Neither is the Tribunal aware that the Respondents tried to offer an apology to Dr. Merkes. The Tribunal therefore decides that the Respondent’s non-participation in the proceedings should be considered as adverse interference.

- 7.10 With regard to the sanctions, the Tribunal agrees with the FEI that pursuant to Article 169.1 of the GRs the actions of the Respondents involved fraud and were deliberate. Furthermore, the Tribunal agrees with the FEI that not vaccinating the Horses could potentially also amount to maltreatment of a horse, and especially had the potential to put the Horses' as well as other horses' health at risk.
- 7.11 In addition, the Tribunal also finds that the actions resulted in an unfair advantage, *i.e.*, fulfilling the conditions to enter international events, which would not have been the case otherwise.
- 7.12 Taking into account all the circumstances of the case, in particular the failure of the Respondents to cooperate with the investigation, their failure to reply to the Tribunal and that criminal conduct has been established by a state court the Tribunal finds that the sanctions requested by the FEI are too light.
- 7.13 Instead, the Tribunal finds that a period of suspension of eighteen (18) months for both Respondents is more appropriate in the case at hand. Further, this period of suspension is proportionate in the case at hand, given the conduct of the Respondents, the rule breaches established, and in taking into consideration the relevant factors of Article 169.1 of the GRs.

8. Decision

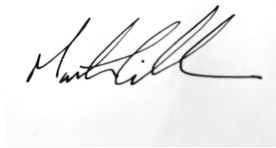
- 8.1 In accordance with Articles 169.6.4 and 169.1 of the GRs the Tribunal imposes the following sanctions on the Respondents:
- 1) The Respondents' actions violated Article 169.6.4 of the GRs.
 - 2) The Respondents shall both be suspended for a period of **18 months** from any involvement in FEI activities at a national or international level, starting from the date of the present Decision. Therefore, the Respondents shall be suspended **through 25 September 2021**.
 - 3) The Respondents shall be each fined **three thousand Swiss Francs (CHF 3,000)**.
 - 4) The FEI shall ensure that the entries in the Horses' passports are corrected.
 - 5) Each party shall bear its own costs in the proceedings.
- 8.2 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.
- 8.3 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within 21 days

of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read "Martin Gibbs", is centered on the page. The signature is written in a cursive style with a long horizontal stroke at the end.

Mr. Martin Gibbs, one member panel