

THE JUDICIAL COMMITTEE

EQUESTRIAN SPORTS NEW ZEALAND INC

UNDER **General and Veterinary Regulations
and Policies 2007, Article 141**

IN THE MATTER of Samantha Lissington

Decision of Judicial Committee

**Hon Rhys Harrison, QC (Chair), Anthony Parsons and
Kavita Deobhakta**

Dated 18 December 2020

EQUESTRIAN SPORTS NEW ZEALAND INC
Panama House
22 Panama Street
Marion Square
Wellington 6141

Introduction

- 1 On 17 November 2020 the Chief Executive of Equestrian Sports New Zealand Inc (ESNZ) referred a matter to a specially appointed Judicial Committee for hearing and determination in accordance with the General and Veterinary Regulations and Policies 2007 (the Regulations).¹
- 2 The matter involved the responsibility of Mrs Samantha Lissington, a member of ESNZ, for breaches of the Regulations by entering incorrect dates of birth of two horses in official records held by ESNZ and Federation Equestre Internationale (FEI). On 25 November 2020 we gave Mrs Lissington formal notice of five particular breaches and our intention to hear and determine the matter on 15 December 2020. We advised her to engage legal representation and repeated this advice in a notice dated 11 December 2020.
- 3 We heard the reference by audio visual link at 8.30am (New Zealand time) on 15 December 2020. Mrs Lissington, who is presently living in the United Kingdom, elected to represent herself and appeared with her husband. In accordance with her written advice given on 9 December 2020, Mrs Lissington admitted all five breaches, and the hearing was limited to the issue of an appropriate penalty.
- 4 In advance of the hearing ESNZ and Mrs Lissington filed helpful written submissions on the issue of penalty. As will become apparent, we are satisfied that the result of the hearing was not adversely affected by Mrs Lissington's decision to represent herself.

Breaches

- 5 The breaches were set out in a notice to Mrs Lissington dated 25 November 2020. It was alleged that Mrs Lissington engaged in an activity that has brought or will bring discredit and disrepute to ESNZ (Article 123, clause 2.6 of the Regulations) by:
 - (a) on or about 31 May 2019 knowingly and falsely registering with ESNZ for inclusion in the ESNZ National Identification Document the incorrect date of

¹ Article 141, clause 2 h

birth of the horse Ricker Ridge Ricochet as 5 January 2014 when [Mrs Lissington] knew its true date of birth was 23 November 2013;

- (b) on or about 31 May 2019 knowingly and falsely applying for a FEI passport for Ricker Ridge Ricochet by including its incorrect date of birth as 5 January 2014 when [Mrs Lissington] knew its true date of birth was 23 November 2013;
- (c) in or about October 2020 knowingly and falsely recording the incorrect date of birth of Ricker Ridge Ricochet as 5 January 2014 when entering the horse in the FEI World Breeding Championship for Six Year Old Horses held in October 2020 when [Mrs Lissington] knew its true date of birth was 23 November 2013;
- (d) on or about 31 May 2019 knowingly and falsely registering with ESNZ for inclusion in the ESNZ National Identification Document the incorrect date of birth of the horse Ricker Ridge Valentina as 8 January 2013 when [Mrs Lissington] knew its correct date of birth was 30 December 2012;
- (e) on or about 31 May 2019 knowingly and falsely applying for a FEI passport for Ricker Ridge Valentina by including its incorrect date of birth as 8 January 2013 when [Mrs Lissington] knew its correct date of birth was 30 December 2012.

Facts

- 6 The material facts fall within a narrow compass and are not in dispute.
- 7 The Regulations² provide that for the purpose of competing in any ESNZ events, all horses are deemed to have their first birth date on 1 August in the year in which they are born. The FEI rules provide that for its competition purposes the relevant first birth date is 1 January in the horse's year of birth.
- 8 The Regulations further provide that for all new horses registered with ESNZ, all relevant details must be correctly completed by the person responsible for that horse.³
- 9 Mrs Lissington was the person who was responsible for registering details of the dates of birth of two horses, Ricker Ridge Ricochet (Ricochet) and Ricker Ridge Valentina (Valentina), with ESNZ on 30 May 2019. Both dates were incorrect to her knowledge, with the result that they were registered as born one year younger than if their correct

² Article 127, cl 1

³ Article 128, cl 1

birth dates had been entered. Mrs Lissington then used the same incorrect birth details on 31 May 2019 to obtain passports from FEI for both horses.

10 In September 2020 Mrs Lissington, relying on the incorrect date of birth entered in the horse's FEI passport, entered Ricochet in the class for six year old horses in the Young Horse World Championships in France conducted by FEI when she knew that its correct registered age was seven years. Shortly afterwards, ESNZ learned from informal sources that Mrs Lissington had provided an incorrect date of birth in Ricochet's entry form. Mrs Lissington withdrew the horse from the competition before the scheduled event in October after receiving formal notice from ESNZ of the horse's ineligibility, resulting in a technical disqualification.

11 Mrs Lissington later acknowledged that Valentina's birth details were also registered incorrectly. She has since cooperated fully with ESNZ in rectifying the incorrect entries in its registration records and in the FEI passports.

Penalty

12 We propose to determine the issue of penalty by adopting a two stage approach which is designed to be principled and fair, first by setting a starting point for the appropriate penalty by reference to the seriousness of the breaches and the culpability of Mrs Lissington's conduct, before separately taking account of her personal circumstances.

Starting Point

13 Mrs Lissington admits that she has engaged in an activity that has brought or will bring discredit and disrepute to ESNZ.⁴ The range of appropriate penalties includes an official warning, a fine and suspension from participation in any FEI or ESNZ sanctioned event.⁵ In deciding on the appropriate penalties, we must take into account, among other things, whether the act (a) is or was likely to bring the sport of equestrian into disrepute publicly; (b) involved fraud – an intention to deceive; and (c) was deemed to be deliberate.⁶ All three factors are features of Mrs Lissington's breaches. To her credit, she does not dispute that she has committed serious violations of the regulations.

⁴ Article 123, cl 2.6

⁵ Article 141, cl 30

⁶ Article 141,cl 31

- 14 The Regulations further provide that suspension is appropriate in cases of intentional contraventions.⁷ Suspension must be for a stated period during which the suspended person may not take part in competitions or events under the jurisdiction of the FEI or ESNZ in accordance with the rules of both bodies. In deciding when the suspension date will begin, we must have regard to the gravity of the breach. Again, Mrs Lissington does not dispute that a period of suspension is appropriate.
- 15 Mrs Lissington submitted that she did not attempt to obtain an unfair competitive advantage because in her view the FEI birth provision is prejudicial against New Zealand bred horses. It has the effect of treating New Zealand bred horses as up to 12 months older than their biological age, creating an unlevel playing field in events with Northern Hemisphere horses. However, on that rationale all participants in age group competitions are subject to a degree of comparative disadvantage - one horse will always be of a different chronological age than another. All age group sporting events depend on the stipulation of an arbitrary cut-off date - whether, for example, the start of the calendar year or the date of the event - with the inevitable consequence that participants may be competing against others within a chronological age range of up to 12 months. Taken to its logical extension, this argument is potentially available to all competitors. In any case, as Mrs Lissington herself admits, that factor does not justify dishonesty.
- 16 Each case depends largely on its own facts but we have considered whether there are analogous decisions in the equestrian disciplinary field. The only decision which we have located is of the FEI Tribunal delivered earlier in 2020 ⁸(*Olson*). In that case a single member panel imposed penalties of 18 months suspension on an owner and trainer of two horses for which they had falsified vaccination certificates in the horses' passports. The panel rejected FEI's submission that a penalty of six months was appropriate. The Olsons had forged four separate entries of a veterinarian's certificate for one horse and three entries for another horse over a period of one year. The horses were able to compete in a number of FEI events as a result. The Olsons' did not contest the FEI's charges or participate in the disciplinary process before the Tribunal.
- 17 The core elements of an intention of deceive the governing equestrian body and obtain an unfair competitive advantage are common to both cases. However, in our view there are a number of distinguishing features in the *Olson* decision: the offending was

⁷ Article 141, clause 35

⁸ In the Matter of FEI v Olson 26 March 2020

of a significantly more serious nature; it was prolonged and involved repetitive forgery of a third party's signature; it resulted in the two horses competing in events where they exposed the welfare of other horses to health risks; and the panel gave weight to the fact that the falsification led to state authorities laying criminal charges against the Olsons. Also, they did not express contrition or remorse for their wrongdoing.

- 18 After taking all relevant factors into account, we are satisfied that a starting point of six months suspension will appropriately recognise the gravity of Mrs Lissington's violations and in particular the aggravating factors of five separate dishonest acts, a preconceived plan to deceive the two governing equestrian bodies, and breaches of trust and personal responsibility. That starting point would also serve as a measure of official denunciation of Mrs Lissington's misconduct and hold her accountable for the harm caused to ESNZ by her actions.

Personal Circumstances

- 19 We must then adjust that starting point to take account of Mrs Lissington's personal circumstances. We have already referred to her unconditional remorse and cooperation with ESNZ in rectifying her errors. She is a 29 year old rider who is of otherwise excellent character. She has previously enjoyed an unblemished disciplinary record. She is highly regarded by ESNZ and its management. She is an elite sportswoman of world class standing who competes internationally and has realistic aspirations of representing New Zealand at the 2021 Olympics. She also conducted herself openly, courteously and cooperatively at the Committee's formal hearing on 15 December.
- 20 Two other factors are particularly relevant. First, the naivety of Mrs Lissington's misconduct is difficult to comprehend. The New Zealand equestrian community is small. Her mother had proudly announced the date of Ricochet's birth on social media. Mrs Lissington should have appreciated the likelihood if not the inevitability that others in the community would recognise and identify her deceit in entering the horse in the FEI event.
- 21 Second, Mrs Lissington accepts that we will direct publication of its decision on the ESNZ website.⁹ We are satisfied that the consequences of publication will constitute the gravest sanction which Mrs Lissington will suffer from her violations.

⁹ Article 141, cl 22

22 In combination, these mitigating personal circumstances justify a 50% or three months reduction in the starting point for Mrs Lissington's suspension, with the end result that a three months suspension together with a monetary fine is appropriate. ESNZ supports the imposition of a period of suspension which strikes an appropriate balance between the dual purposes of serving as a true penalty or hardship for Mrs Lissington on the one hand and not unfairly or unduly interfering with her eventing schedule for 2021 on the other. Mrs Lissington has provided us with a calendar of her proposed competitive programme for 2021. We are satisfied that fixing a starting date for a period of three months suspension of 8 December 2020 will meet the ends of justice in this case.

Result

23 We are satisfied that Mrs Lissington has brought ESNZ into discredit or disrepute by falsifying entries for the birth dates of two horses when registering them with ESNZ, when applying for FEI passports for the two horses, and entering one of them in a World Championship event for restricted age group horses organised by the FEI.

24 We impose a period of suspension on Mrs Lissington of three months commencing on 8 December 2020 from participating in any competitions or events under the jurisdiction of the FEI or ESNZ together with a fine of \$5000 to be paid to ESNZ within 28 days of our decision.

25 We direct ESNZ to publish a full copy of this decision on its website.

Rhys Harrison QC
Chair