

Severe Depression Reason Enough!

Terrier Companion Allowed Despite No-Dogs Provision

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Last year the California Court of Appeal published its opinion in *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission* (2004) 121 Cal. App. 4th 1578, and the California Supreme Court allowed the decision to stand. Jayne and Abdelfatah “Ed” Elebiari sought permission from the Association to keep a small dog, even though the Association’s CC&Rs contained a “no dogs” provision.

Disallowing Small Dog for Severe Depression Violates California FEHA

The Elebiaris suffer from severe depression and found that the dog alleviated their symptoms and enabled them to function more productively. The Association refused their request, leading the Elebiaris to file a claim with the California Fair Employment and Housing Commission (the FEHC or the Commission), which found in favor of the Elebiaris. Auburn Woods then filed a petition for administrative writ of mandate to overturn the FEHC decision, and the trial court granted the requested relief. The Elebiaris and the FEHC appealed the trial court’s judgment, requesting that the original decision of the FEHC be reinstated. The Court of Appeal agreed with the appellants and decided that not allowing a couple living in a condominium development to keep a small dog that alleviated their symptoms of severe depression violated the California Fair Employment and Housing Act.

The Court of Appeal held that depression can meet the definition of disability and, under the right circumstances, allowing a companion dog can constitute a reasonable accommodation despite a no-dogs policy. In this case, the Elebiaris were able to present compelling evidence that their disabilities limited their use and enjoyment of their condominium — keeping a companion dog improved that situation.

Plea for Reasonable Accommodations Supported by Doctors’ Request

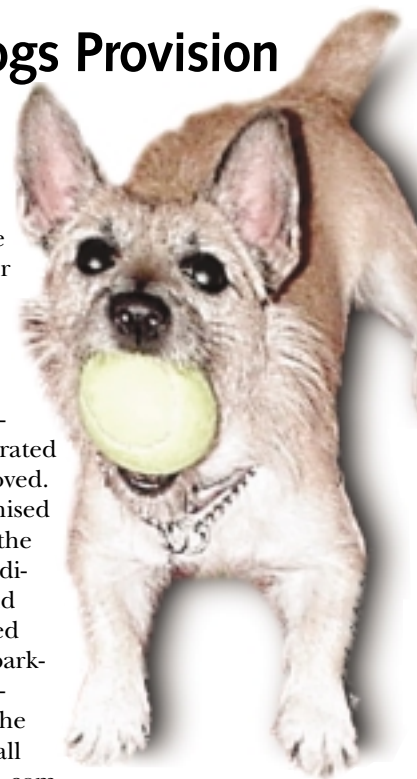
Ed Elebiari was involved in a serious car accident in 1991 and suffered brain damage that required three surgeries. He is hydrocephalic, has a seizure disorder, has severe headaches, and suffers from depression. Ed’s wife, Jayne, also suffered from depression, with serious recurrent episodes lasting from nine months to one year.

In 1998, the Elebiaris bought a condominium at Auburn Woods. Section 6.17 of the CC&Rs provides that...

“No reptiles or animals shall be permitted in the Condominium Units or on the property except that pet birds and domestic house cats (limit of 2) shall be allowed so long as they do not constitute a nuisance to the neighbors and other residents. The Board of Directors has the discretion to adopt reasonable rules and regulations in regard to the keeping of these specifically enumerated pets so as to avoid nuisance problems or health and safety hazards. No dogs are allowed to be kept anywhere in the development.”

Despite this ban on dogs, in April 1999, the Elebiaris brought home a small terrier named Pooky. The Association requested the dog’s removal, and in response,

the Elebiaris submitted letters by themselves and their doctors requesting a reasonable accommodation to their impairment by waiving the prohibition against dogs. They explained that the Elebiaris were improved with the companion pet and deteriorated when the dog was removed. The Elebiaris also promised that if allowed to keep the dog, they would “immediately dispose of any solid waste products produced [by] the dog; keep all barking to an absolute minimum at all times; and the dog will wear a lead at all times if she’s within the common condo areas. Furthermore, she will not be allow[ed] in the laundry-room, pool area, or places where residents congregate.”



Association Refuses to Accommodate

Despite the Elebiaris’ repeatedly making their needs known to the Association, offering to provide medical evidence to support their claims, and hiring advocates and attorneys to press their position, the Association refused to make the accommodation. The FEHC characterized the Association’s lengthy delay in finally offering to accommodate as a refusal, which characterization the Court of Appeal upheld. The Court of Appeal held that if the Association questioned the sufficiency of the information provided, it had the duty to request further documentation.

Association Suggests Companion Cat Instead – Allergy Prevents Switch

Note that at one point, the Association suggested that the Elebiari’s exchange the companion dog for a companion cat which would be allowed. Jayne Elebiari is allergic to cats, so the exchange was not a feasible option. It is not clear whether the FEHC or the Court of Appeal would have enforced the CC&Rs against the Elebiaris and in favor of the Association by making the Elebiaris obtain a cat in place of the dog if Mrs. Elebiari were not allergic.

Court of Appeal Says Therapeutic Presence of Dog Qualifies

Finally, the Court of Appeal clarified that a disabled person need not be incapable of any use and enjoyment of his or her home before requiring a reasonable accommodation. The owners did not need to prove the dog was a service animal, only that its presence was therapeutic to qualify for reasonable accommodation under the California Fair Employment and Housing Act (Government Code Sections 12900 *et seq.*).