

California Department of Fair Employment & Housing

Fair Housing Bulletin

Date: August 27, 2004

Subject: The Court of Appeal of the State of California, Third Appellate District Decision (*Auburn Woods Homeowners Association v. Abdelfatah Elebiari*)

The Court of Appeal of the State of California, Third Appellate District ruled in favor of the Fair Employment and Housing Commission (FEHC or Commission) on August 25, 2004. The decision found the Auburn Woods Homeowners Association (“Auburn Woods”) liable for their refusal to grant a reasonable accommodation to Jayne and Abdelfatah "Ed" Elebiari, namely, the right to keep their pet dog, “Pooky” in their condominium in spite of a “no dogs” rule.”

The case, *Department of Fair Employment & Housing v. Auburn Woods I Homeowners Association* (May 7, 2002) No. 02-11, concerned the issue of reasonable accommodation under the State fair housing laws. The Auburn Woods condominium development was governed by Covenants, Conditions, and Restrictions (CC&Rs) that stated: “No dogs are allowed to be kept anywhere in the development.” Interestingly, the CC&Rs did allow pet birds and house cats. After the Elebiaris (complainants) had been living with Pooky for about three months, Auburn Woods sent them a letter telling them that if the dog were not removed from their home, they would be fined. In response to the letter, the Elebiaris gave their dog away to a friend. They were distraught.

After a few months had passed, the complainants then wrote various letters to Auburn Woods asking for permission to keep Pooky in their home. These letters were accompanied by notes from their doctors explaining their need for the dog. Auburn Woods denied the request, suggesting that the Elebiaris get a cat, even after Jayne Elebiari went to a board meeting and explained that she was allergic to cats.

In February 2000, the Elebiaris filed a complaint with the Department of Fair Employment and Housing alleging that Auburn Woods had unlawfully discriminated against them by failing to provide them reasonable accommodation for their disabilities.

The Commission ruled in favor of the Elebiaris in May 2002, awarding them \$12,500 in emotional-distress damages. Auburn Woods filed a writ of mandate, and the Superior Court reversed, finding that there was not enough evidence to show that the dog was necessary as a reasonable accommodation. The FEHC and the Elebiaris then filed an appeal, which reinstated the FEHC decision.

The Appellate Court found that sufficient evidence had been presented at the hearing to support the Elebiaris' claim that they needed the dog as a reasonable accommodation. Further, the administrative law judge (ALJ) had appropriately made a fact-specific determination that, under these circumstances, the no-dog rule had to yield to the Elebiaris' need to use and enjoy their home.

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The decision is significant. For the first time the California courts have linked fair housing with the companion-animal question. The decision signifies that just as a service animal may assist a person with physical disabilities, the emotional-support derived from a companion-animal can help a person suffering from depression or other emotional illness. In appropriate circumstances, a companion-animal may provide a person with a mental disability equal use and enjoyment of his or her home. To deny such a reasonable accommodation constitutes a violation of the California Fair Employment and Housing Act (FEHA).

The Department of Fair Employment and Housing is the largest state civil rights agency in the country. The Department's mission is to protect the people of California from unlawful discrimination in employment, housing, public accommodations, and from the perpetration of acts of hate violence. For more information about housing discrimination and the FEHA, go to www.dfeh.ca.gov.

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Housing discrimination complaints can be filed with DFEH by calling (800) 233-3212, TTY (800) 700-2320, Oakland area & out-of-state (510) 622-2945.