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Sacramento judge upholds $23 million judgment against Emeritus care facility in woman's death

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First, it was the jury that pummeled the Emeritus senior living corporation for $23 million.

Now, it's the judge - who backed up the panel's punitive-damage award in a wrongful death and elder abuse civil trial Emeritus lost earlier this year in Sacramento Superior Court.

Besides upholding the jury's decision, Judge Judy Holzer Hersher awarded plaintiffs' lawyers $4.3 million more in fees and costs.

In her final ruling, Hersher wrote that the evidence was there to permit the jury to find the Seattle-based firm guilty of "a high degree of reprehensibility" in the care it provided to 81-year-old Joan Boice.

The Alzheimer's patient sustained bed sores when she resided at the Emeritus at Emerald Hills assisted living facility in Auburn five years ago. She died a few months after moving out, with her death certificate listing the pressure ulcers as a substantial factor in her death. Boice was 82 when she died.

"Justice was served, and Judge Judy Holzer Hersher is holding Emeritus' feet to the fire in not letting them overturn the jury's hard work in examining the overwhelming evidence in this case that the only way out of an Emeritus facility is in a coffin," plaintiffs' attorney Lesley Ann Clement said of the rulings returned on Monday.

An Emeritus spokeswoman in Seattle said the company is disappointed in Hersher's finding and will appeal.

"We believe that the verdict was tainted by the admission of improper testimony and evidence and does not reflect the care that we provided to Ms. Joan Boice," Emeritus spokeswoman Karen Lucas said. "We are proud of the high quality of care that Emeritus employees passionately provide to our 41,000 residents nationwide."

Emeritus lawyers sought a reduction from the jury's March 8 verdict or, alternatively, a new trial. They argued the $23 million award landed far beyond the ratios suggested in established case law that ties punitive awards to a single-digit multiplier of the plaintiff's actual damages as established by the jury.

In the Boice case, the jury awarded her survivors $3.875 million for her pain and suffering, the base figure for the punitive award - a ratio of almost 6 to 1 - that would seem to fall within the range of the multiplier.

Before the jury came back with that finding, Hersher had capped the pain-and-suffering award at $250,000, in accordance with state law that took effect 38 years ago, limiting such payouts in assisted living lawsuits as well as medical malpractice cases. Hersher didn't tell the jury about the cap, she said, so it could use the finding as a touchstone to make in its punitive award, if the case got that far.

Emeritus said the punitives in the Boice case should have been capped at $250,000, which would put the multiplier at 92 to 1 - way out of the U.S. Supreme Court's suggested parameter.

Hersher, in her disagreement, said the Legislature never clearly enunciated its rationale for imposing the cap in assisted living cases. In her ruling, she called the limitation on pain and suffering awards in assisted living cases "a question of first impression." When Hersher imposed the cap in a ruling she made during the trial, she said it "would clearly be something the appellate court might want to consider."

On the matter of Emeritus' "reprehensibility," Hersher wrote there were plenty of facts in that regard against the assisted living company, which last year reported cash-flow profits of $116 million on revenues of $1.57 billion.

She wrote that "there was knowledge on the part of Emeritus' management of the lack of trained and appropriate numbers of staff" in the memory care unit. "Express promises were made" to family members by the company about the care of their loved ones, knowing they "could not be fulfilled," Hersher wrote. Employees "were told to remain silent and/or to stall family members or others when they asked pointed questions," specifically about staffing and nursing care, the judge said.

"There was evidence that staff who complained about conditions were terminated or were so upset by what they observed in the lack of provision of services that they quit," Hersher said. "The evidence showed that Emeritus created a false appearance of caring and provision of nursing and other trained staff to attend to the needs of the memory care unit patients."

Medication logs were "kept improperly," and possibly "doctored with respect to Ms. Boice," the judge wrote. Emeritus "misrepresented its ability" to come up with programs for Boice. The company failed to work with her doctors to provide medical services for her "in a timely and safe manner."

The judge cited the plaintiffs' language in saying that Emeritus wanted "heads in the beds" as long as possible and sought to "accept persons, like Joan Boice, when they should not have have accepted them due to their physical and/or mental condition and the lack of adequate staffing to care for them."

Plaintiffs argued during trial that the company's drive for profits made it want to retain its residents as long as possible.

Hersher brushed off Emeritus' arguments that the company was prejudicially tainted when one of its experts testified he was once honored as a "Doctor of the Year" and the plaintiffs pointed out on cross-examination that the award was given to him at a Republican Party fundraiser in Washington, D.C.

She also said there was nothing wrong at trial when the jury learned that Emeritus doesn't pay income taxes because the information was offered by its own chief financial officer in response to a question on cross examination about the company's tax write-offs.

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