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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LEILA MENDEZ and ALONSO ZARAGOZA,)
)
Plaintiffs,)
)
v.)
)
CITY OF CHICAGO, et al.,)
)
Defendants.)

8130771
Case No. 16 CH 15489
Judge Sanjay T. Tailor

**REPLY IN SUPPORT OF
PLAINTIFFS’ MOTION TO EXCLUDE DEFENDANTS’ EXPERT**

Defendants argue that their proffered expert, Bryan Esenberg, based his opinion in this case, not on “scientific evidence,” but “on his knowledge, observations and experience,” particularly his work related to affordable housing for the City of Chicago. *See* Response at 3–6. Defendants emphasize that Esenberg’s experience supposedly qualifies him to opine that the reports on which the City relied to justify its home-sharing surcharge “are the type that policymakers would reasonably rely upon,” which the Defendants apparently consider the key finding of his report. Response at 6; *see also* Mot. to Exclude, Ex. C, Esenberg Report (“Esenberg Report”) at 4–5. But Defendants’ argument has several fatal flaws.

First, Esenberg identified no basis for his assertion that the reports at issue “are of a type that would be reasonably relied upon by policy makers and advisers in positions such as mine.” Esenberg Report at 5. At his deposition, Esenberg admitted that he does not know “what other policymakers outside the city of Chicago would rely on.” Mot. to Exclude, Ex. D, Esenberg Dep. (“Esenberg Dep.”) at 51:21–52:4. He was unable to explain the “type” of reports he and others in Chicago government supposedly rely on in forming their opinions. *See id.* at 46:17–48:13.

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Therefore, Esenberg’s statement that the reports are of a type that policymakers reasonably rely on is conclusory and baseless, and should be excluded. *See* Mot. to Exclude at 6–8.

Second, contrary to Defendants’ repeated assertions, Esenberg *did* purport to offer “scientific” opinions in his report. Esenberg attempted to rebut the findings of Plaintiffs’ expert economist, Adrian Moore, Ph.D., who opined—based on his expertise as a professional economist—that the studies the City has cited do not provide a basis for drawing conclusions about home-sharing’s effect on affordable housing and homelessness in general or in Chicago specifically. Indeed, Esenberg’s report purports to rebut Dr. Moore’s opinion with respect to each of the studies and affirmatively opines that one *can* draw general conclusions from studies of other cities. *See* Esenberg Report 5–6. Defendants now admit that Esenberg’s opinions were “not based on any scientific evidence at all.” Response at 3. And if his ostensible rebuttals of Dr. Moore’s scientific opinions are not based on scientific evidence or methodology, then they are not based on *anything*. Defendants do not and cannot argue that Esenberg’s experience working for the City of Chicago somehow enables him to opine on the conclusions one can draw from scientific literature without any scientific evidence and without any knowledge of statistics, econometrics, or the relevant methodology. Esenberg’s ostensible rebuttals of Dr. Moore’s conclusions should therefore be excluded.

Third, contrary to Defendants’ argument, Esenberg’s “first hand observations” related to the alleged conversion of a Logan Square single room occupancy hotel (“SRO”) “into a building reserved for short-term rentals” do not provide a reliable basis for his opinion. *See* Response 7–8. On the contrary, that is the very definition of “anecdotal.” *Muzzey v. Kerr-McGee Chemical Corp.*, 921 F. Supp. 511, 519 (N.D. Ill. E.D. 1996) (“[a]necdotal reports . . . are not reliable bases to form a scientific opinion about a causal link.”). Esenberg’s deposition testimony revealed that

Esenberg does not know whether more than one of the building's 24 units will be used for short-term rentals, Esenberg Dep. at 25:8–21, and that he was unaware, when he wrote his report, that the Chicago Municipal Code (§§ 4-6-300(h)(9), 4-14-060(e)) prohibits more than six units in the building from being used for short-term rentals, Esenberg Dep. at 25:4–7.

Because Esenberg lacked any basis for his assertion that the building was “converted into a building that will be reserved for short term rentals,” he and the City cannot use the building's purported conversion as evidence of home-sharing's effect on affordable housing and homelessness. Esenberg Report at 7. Further, even if one could put aside that fatal flaw, Esenberg's conclusion about the SRO would still have no reliable basis because Esenberg lacks knowledge of SROs, the housing market, and zoning, all of which would be essential to analyze whether the loss of the Logan Square SRO was caused by the availability of short-term rentals or by other factors that have contributed to high rents in Logan Square and to the severe decline of SROs in Chicago over many decades. *See* Mot. to Exclude at 9–12. Here again, Esenberg's opinion is simply baseless and therefore should be excluded.

Dated: January 17, 2020.

Respectfully submitted,

LEILA MENDEZ and ALONSO ZARAGOZA

By: /s/ Jacob Huebert

One of their Attorneys

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CERTIFICATE OF SERVICE

I, Jeffrey Schwab, an attorney, hereby certify that on January 17, 2020, I served the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion to Exclude Defendants' Expert via electronic filing service provider FileTime Illinois to Weston Hanscom (Weston.Hanscom@cityofchicago.org), Richard Danaher (Richard.Danaher@cityofchicago.org), and Jason Rubin (Jason.Rubin@cityofchicago.org).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab