SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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PENN HOTEL JUNIOR LLC,

Plaintiff,

- v -

JCMC WEST 34 MEZZ II LLC,MEYER CHETRIT

Defendant.

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INDEX NO. 650126/2023

MOTION DATE 01/09/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155

were read on this motion to/for PRECLUDE.

Upon the foregoing documents, it is

In Motion 004, Penn Hotel Junior LLC (defendant in Index No. 651694/2023 and plaintiff in Index No. 650126/2023) moves to preclude portions of Robert A. Knakal's expert report. Knakal is JCMC West 34 Mezz II LLC's (defendant in Index No. 650126/2023 and the plaintiff in Index No. 651694/2023) expert in both actions, as well as Chetrit's expert in 650126/2023. Penn Hotel's motions to preclude are unopposed in both actions.

Specifically, Penn Hotel seeks an order precluding Knakal's report to the extent that Knakal opines as to: (1) the indemnification provision in the Terms of Sale for the January 2023 auction sale conducted pursuant to Article 9 of the Uniform Commercial Code ("UCC Sale"); (2) the potential effects of the Terms of Sale on bidding interest; and (3) the overall commercial reasonableness of the sale (the "Excludable Subjects").

The court grants these motions absent opposition. Penn Hotel correctly argues that Knakal's report does not comply with CD Rule 13 with respect to the Excludable Subjects (*see* Penn's br, Doc 160, at pg 9-10 ["he did not disclose the identity of one of his three sources, who

was concededly integral to the opinion he formed. Second, he has not produced any notes of his calls with any of the three individuals because he variously threw away his notes or, in contravention of his usual practice, did not take any notes . . . [and he] admits that he reviewed the notes he did create before typing up, on the day it was due, the report containing his brand-new opinion on a topic on which he lacks any expertise"]).

Thus, JCMC and Chetrit are precluded from offering the portions of Knakal's report that concern the Excludable Subjects at summary judgement or trial (*see Taxi Tours Inc. v. Go New York Tours, Inc.*, 227 AD3d 530, 531 (1st Dep't 2024]). Knakal is also precluded from providing testimony as to the excludable topics at trial, should these cases survive summary judgment.

Accordingly, it is

ORDERED that Motion seq. no. 004 is granted, absent opposition.

5/9/2025
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE