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COMMISSIONER OF TRANSPORTATION *v.*
ACP, LLC, ET AL.
(AC 45523)

Prescott, Elgo and Clark, Js.

Syllabus

The plaintiff Commissioner of Transportation appealed to this court from the judgment of the trial court awarding certain damages to the defendant property owner for the taking by eminent domain of a portion of its real property by the commissioner. The defendant had appealed to the trial court, pursuant to statute (§ 13a-76), challenging the assessment of damages for the partial taking filed by the commissioner. The commissioner deemed the partial taking necessary for the widening of Route 1 in Norwalk onto the defendant's property. The partial taking consisted of a rectangular piece of land along the frontage of the defendant's property, approximately 100 feet in length, with a temporary easement to, inter alia, construct a sidewalk and driveway, to install a temporary sedimentation control system, and to install pavement markings. The commissioner assessed total damages of \$72,500 for the partial taking, which the defendant claimed was wholly and totally inadequate to provide just compensation. While the application for a reassessment of damages was pending in the trial court, construction commenced, during which all utilities on the property were relocated, five parking spaces were rendered unusable, and construction vehicles, including a crane, a dump truck, and a cement mixer, were occasionally parked on the property. The construction affected ingress and egress to and from the property by employees and occupants of the buildings on the property, which included a veterinary hospital. A veterinarian with an ownership interest in the defendant testified that the police and construction workers had to be advised to move their vehicles to allow clients onto the property, and that customers complained about the disruption caused by the construction. During the evidentiary hearing on the application for reassessment, both parties presented testimony from expert real estate appraisers. The defendant's expert witness, G, a professional real estate appraiser, testified that it was his opinion that the defendant was entitled to temporary severance damages in the amount of \$51,000 because it would have been more difficult to rent the commercial space located in the buildings on the property during the period of construction, and, consequently, the \$51,000 represented a 10 percent decrease to the fair market rental value of the commercial space during the 2.8 years of construction. G testified that he based that amount on the negative impact of the construction on the entrance to the property, and, more specifically, the impeded access to tenants and occupants of the buildings on the property, as well as the noise, dust, and disruption to the property caused by construction, and the loss of five parking spaces. G averred that his methodology was founded on the measure of temporary loss of market rental value and not on any contract leases during the time period and that he reviewed and analyzed the rent of seventeen similar properties within Norwalk. When asked by the trial court as to how G determined that the construction caused a 10 percent diminution in the market rental value, G testified that it represented his subjective judgment as to the degree of loss, and his judgment was not a product of quantitative analysis, but rather predicated on his many years of doing appraisals and analyzing properties of this type, and an accumulation of factors. In contrast to G's testimony, the commissioner's expert witness opined that the defendant was not entitled to any temporary severance damages because there was no damage to the remainder of the property as a result of the taking, that the property received the benefit of a new driveway, and that noise and dust were not part of severance damages because those factors were general impacts to all property owners along the affected area of Route 1, and not just to the defendant's property. He also characterized G's opinion on temporary severance damages as utilizing an arbitrary number that had no basis in fact. The trial court found in favor the defendant, crediting G's opinion,

and reassessed the total value from the partial taking to include temporary severance damages in the amount of \$51,000, for a total amount of \$138,500, and awarded additional costs, fees, and interest. The trial court also rejected the arguments advanced by the commissioner's counsel as to why G's estimate as to temporary severance damages was flawed. On the commissioner's appeal to this court, *held* that the trial court's severance damages award was not clearly erroneous because it was the function of the trial court, as the sole arbiter of credibility, to determine whether G's opinion was arbitrary and speculative as the commissioner claimed, and to assign whatever weight it deemed appropriate to that opinion, and the commissioner failed to provide, and this court was not aware of, any authority in which this court reversed a trial court's condemnation award that was made on the basis of an expert's opinion on the ground that such an opinion was the product of the expert's subjective views; moreover, if the commissioner believed that G's opinion was too arbitrary or speculative to have supported an award of temporary severance damages, the proper method to have precluded the trial court's reliance on G's opinion was to challenge the admissibility of that opinion on those grounds by way of a pretrial motion in limine or an objection at the evidentiary hearing, which the commissioner failed to do, rather, the commissioner's counsel stipulated that G was an expert appraiser and did not object to the introduction of his report into evidence or to his testimony with respect to temporary severance damages; furthermore, the trial court carefully considered the commissioner's contention that G's opinion was arbitrary and speculative, having posed its own questions to the witnesses, including inquiries as to how G arrived at his 10 percent estimate, and G was subject to adept cross-examination by the commissioner's counsel, who thoroughly questioned him as to the factual basis for his decision that noise and dust affected the market rental value of the property, and the methodology, if any, that he used to arrive at his 10 percent estimate, and, although the commissioner, on appeal, disagreed with the trial court's credibility assessment, this court could not reverse the trial court's judgment on that basis.

Argued May 24—officially released October 3, 2023

Procedural History

Appeal from the award of damages to the named defendant on its application for a reassessment of damages from the notice of compensation and assessment of damages filed by the plaintiff for the partial taking by condemnation of certain of the named defendant's real property, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Charles T. Lee*, judge trial referee; judgment for the named defendant, from which the plaintiff appealed to this court. *Affirmed.*

Andrew Mark Ammirati, assistant attorney general, with whom were *Raul Antonio Rodriguez*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellant (plaintiff).

Frank W. Murphy, for the appellee (named defendant).

Opinion

CLARK, J. The plaintiff, the Commissioner of Transportation (commissioner), appeals from the judgment of the trial court awarding damages to the defendant ACP, LLC,¹ for the taking by eminent domain of a portion of its real property by the commissioner. On appeal, the commissioner claims that the court improperly relied on the expert opinion of the defendant's appraiser to award the defendant temporary severance damages because that expert opinion was arbitrary and speculative. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to this appeal. The defendant owns real property located at 322 Westport Avenue, also known as U.S. Route 1, in Norwalk (property). The property consists of a 30,382 square foot parcel of land improved with a one-story building and a two-story building. The one-story building is 4059 square feet and was occupied by a high-end printing franchise between December, 2017, and September, 2019. The two-story building is 6654 square feet and at all relevant times was occupied by a veterinary hospital for cats, named "A Cat's Place," which is an entity related in ownership to the defendant. The property has 102 feet of frontage on Route 1, which is one of the most heavily developed retail corridors in Fairfield County. Vehicular access to the property was by way of a thirty-eight foot curb cut leading across a tapering concrete apron to a driveway that provided access to a parking lot with thirty-five parking spaces.

On December 1, 2017, the commissioner, pursuant to General Statutes § 13a-73 (b),² filed a notice of condemnation and assessment of damages for the taking of a narrow strip of land along the entire frontage of the property (partial taking). The commissioner deemed the partial taking necessary to improve the intersection of Route 1 and Strawberry Hill Avenue, which required the widening of Route 1 onto the property. The partial taking was a rectangular area amounting to 1231 square feet, approximately 100 feet in length and varying between ten and fourteen feet in width, together with a temporary easement to construct a driveway and sidewalk, to install a temporary sedimentation control system, and to install pavement markings. The commissioner assessed damages of \$72,500 for the partial taking. On January 18, 2018, the defendant, pursuant to General Statutes § 13a-76, filed an appeal and application for reassessment of damages, claiming that the damages assessed by the commissioner for the partial taking were "wholly and totally inadequate to provide just compensation."

During the pendency of the present action, construction on the property to widen Route 1 occurred at various times between 2018 and 2022. The construction consisted of, *inter alia*, the regrading and shortening of

the driveway on the property, the repositioning of Route 1 and the sidewalk closer to the buildings on the property, the installation of a new sidewalk, as well as the relocation of all utilities—such as gas, water, electric, sewer, and telephone—from their current location next to Route 1 into the partial taking area. The water and gas lines were relocated twice. The area of construction was more than 2000 square feet and rendered five of the parking spaces on the property unusable. The reconstruction of the driveway spanned April, 2020, to August, 2022. Because the roadway and the sidewalk were moved closer to the building, it became necessary to remove and replace a streetside garden and a sign on the property. Construction vehicles, including a crane, a dump truck, and a cement mixer, were occasionally parked on the driveway to the property. Consequently, a portion of the driveway was periodically closed off with yellow tape, and the entrance to the property was sometimes blocked entirely. Although the veterinary hospital located in the two-story building was not forced to close due to the interference, it was without water for one day while the main was being relocated. The printing business located in the one-story building quit its lease in September, 2019.

On September 22, 2021, the court held an evidentiary hearing with respect to the reassessment of damages for the partial taking of the property. The defendant called two witnesses: Edward Kurose, a veterinarian with an ownership interest in the defendant, and Michael Gold, a real estate appraiser retained by the defendant. The commissioner called two of his employees as witnesses: Christina Smith, the supervising property agent for the Route 1 construction project, and John Kerr, an expert real estate appraiser. The parties cumulatively introduced many exhibits into evidence, generally consisting of pictures of the property before, during, and after the construction; surveys and maps of the property and the partial taking; letters and correspondence from the Department of Transportation (department); and the reports of the competing appraisers.

At the hearing, Kurose testified about the disruption that the construction caused to his veterinary hospital located in the two-story building on the property. Kurose explained that the construction was erratic, that there was no clear pattern as to when work was being done, and that his customers regularly complained of the disruption caused by the construction. He averred that the construction affected the ingress and egress by the employees and customers of the businesses to and from the property and, as a result, he was required to advise the police or construction workers to move their vehicles to allow his clients entry onto the property. Smith testified that, although she had not been to the property, she had reviewed the relevant maps and reports with respect to the construction. She briefly

testified regarding the scope of construction completed at the property, the partial taking, and the temporary easement.

The testimony of the parties' competing expert appraisers did not markedly differ in their estimation of the value of the condemnation of the fee interest. The commissioner's appraiser, Kerr, assessed the value of the partial taking of the fee interest as \$80,000. The defendant's appraiser, Gold, valued the partial taking of the fee interest as \$87,500. Nevertheless, the testimony of the expert appraisers diverged with respect to the defendant's entitlement, if at all, to temporary severance damages, which represented the impermanent diminution in value of the remaining property that was caused by the partial taking.

Gold estimated that the amount of temporary severance damages was \$51,000. Gold testified that it was his opinion that it would be more difficult to rent the commercial space located in the buildings on the property during the period of construction and, consequently, his \$51,000 estimate represented a 10 percent decrease to the fair market rental value of the commercial space during the 2.8 years of construction on the property. To support his estimate, Gold focused on the negative impact of the construction on the entrance to the property, which temporarily impeded access to tenants and occupants within the buildings. Gold also supported his estimate with the fact that the construction caused noise, dust, and disruption to the property, including the loss of five parking spaces. Gold averred that, although the veterinary hospital occupying the two-story building essentially was owner-occupied, his methodology was founded on the measure of temporary loss of market rental value and not on any contract leases during the time period. To arrive at his \$51,000 estimate, Gold reviewed and analyzed the rent for seventeen similar properties within Norwalk. On the basis of this comparison, Gold estimated the market rent for the first-floor retail/flex space in the two-story building was \$25 per square foot, the second-floor office space in the two-story building was \$16 per square foot, and the one-story building comprising hybrid retail/flex and warehouse space was \$12 per square foot. Consequently, Gold estimated that the unaffected market rent for the two buildings on the property was \$182,856 per year, multiplied by the duration of the construction, 2.8 years, to equal \$511,996.80. Gold then applied his estimated 10 percent loss of market rent value to reach his appraisal for the temporary severance damages in the amount of \$51,000.

When asked by the court as to how he determined that the construction caused a 10 percent diminution in the market rental value, Gold testified that it represented his subjective judgment as to the degree of loss and that it was not a product of quantitative analysis.

Gold explained that his 10 percent estimate was “predicated on many years of experience doing appraisals and analyzing properties of this type” and an “accumulation of factors” involving the nature of the disruption at the property, including the loss of five parking spaces, and “the disruption caused by the inability to have easy access to the property at all times.” He averred that “these are not conclusions that are readily abstracted from the market or from market data” and that his 10 percent estimate represented a reasonable negative market reaction to the fact that construction significantly affecting the property would occur over a two year span. The court stated that “it would seem to me it might be comforting and preferable if you had hard numbers,” to which Gold responded that the method he employed to arrive at his 10 percent estimate was customary and was recently accepted in a similar Route 1 construction condemnation action—*Commissioner of Transportation v. J. West Associates, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-17-6034495-S (October 20, 2020).

During cross-examination, the commissioner’s counsel questioned Gold with respect to the factual basis for his opinion that noise and dust affected the market rental value of the property. Gold answered that, although he was not aware of any specific documents evincing those disruption aspects, it was reasonable for him to include those factors in his estimate because noise and dust normally arise from construction. Gold also confirmed that his 10 percent estimate represented his best judgment with respect to the loss in market value due to the temporary inconvenience caused by the construction, not on any specific market research of any other similarly affected properties. After cross-examination, the court again expressed its concern that Gold’s 10 percent estimate could be characterized as a bald expression of opinion. In response, Gold testified that his valuation process involved the assessment of the impact of the disruption to the property and that his estimate was a fair reflection of the extent of the disruption.

In contrast to Gold, Kerr’s opinion was that the defendant was not entitled to any temporary severance damages because there was no damage to the remainder of the property as a result of the taking. Kerr testified that the defendant had access to the property at all times and that it actually received the benefit of a new driveway. He averred that noise and dust are not part of severance damages because those factors are “general impacts” to all property owners along the affected area of Route 1, not just the defendant’s property. He testified that there were no severance damages because the construction at the entrance to the property “would generally be accepted by . . . the market.” Kerr characterized Gold’s opinion on severance damages as utilizing an arbitrary number that had no factual basis.

After the evidentiary hearing, the court conducted a site visit to the property in the presence of counsel on October 14, 2021. Thereafter, the parties submitted posttrial memoranda of law and reply briefs in which the principal dispute was the issue of severance damages. In his posttrial written submissions, the commissioner contended that Gold's severance damages estimate was flawed because he did not use a quantitative analysis founded on scientific or documentary evidence and that his valuation was purely speculative. The defendant, in its posttrial memoranda, argued that Gold's estimate was proper and should be credited because it was made on the basis of his professional experience and the conditions of the property during construction.

On April 14, 2022, the court issued a memorandum of decision in which it reassessed the total value stemming from the partial taking from \$72,500 to \$138,500 and awarded the defendant interest of 5 percent on the amount of the increase from the date of the taking, an appraiser's fee of \$8400, and court costs. To arrive at the \$138,500 reassessed value, the court credited Gold's opinion with respect to the condemned fee interest in the amount of \$87,500, as well as temporary severance damages in the amount of \$51,000. As for severance damages, the court held that the defendant had "demonstrated its entitlement to severance damages. The facts establish that its remaining property was impacted by the rights imposed upon it. These impacts include the loss of five parking spaces, diminished access to its business as a result of the relocation of the utility lines and the reconstruction of its driveway, among other things. . . . Gold's approach is based on the uncertainty created by these rights allowing the [department] entry and the right to construct the driveway at any time during the projected project period. To quantify this impact . . . Gold developed a market rent for the improvements based on appropriate comparable properties. He then assessed a diminution of rental value of 10 percent," which resulted in a total estimate of severance damages in the amount of \$51,000.

The court then rejected each of the arguments advanced by the commissioner as to why Gold's estimate as to temporary severance damages was flawed. The court was not persuaded by the commissioner's argument that Gold improperly relied on the existence of noise and dust during the construction because cases such as *Bowen v. Ives*, 171 Conn. 231, 238, 368 A.2d 82 (1976), hold that such impacts are proper considerations for severance damages. The court also rejected the commissioner's argument that Gold's estimate of a 10 percent diminution of market rental value was arbitrary because, although Gold testified that he subjectively developed this percentage, "Gold credibly explained that making such a judgment is an integral

part of preparing an appraisal, for example when adjusting comparable sales to accommodate differences in size, age or location. . . . Kerr used a 10 percent factor on two occasions when adjusting his comparable sales—once to calculate a diminution of value and once to estimate an increase of value. . . . Gold testified that he used the factor in similar situations, and the court notes that it was accepted in this case’s twin, *Commissioner of Transportation v. [J. West Associates, LLC*, supra, Superior Court, Docket No. CV-17-6034495-S]. Accordingly, the court finds this method to be valid, especially in light of . . . Gold’s expertise.” (Footnote omitted.) This appeal followed.

On appeal, the commissioner claims that the court improperly relied on Gold’s opinion to award the defendant temporary severance damages because that opinion was both arbitrary and speculative. The commissioner contends that the present case is controlled by *Commissioner of Transportation v. Larobina*, 92 Conn. App. 15, 27, 882 A.2d 1265, cert. denied, 276 Conn. 931, 889 A.2d 816 (2005). The commissioner argues that, “[u]nder *Larobina*, Connecticut courts must reject an expert’s severance damages calculation when the expert estimates a decrease in value by using an arbitrary percentage factor that is not supported by evidence and a quantitative analysis relating specifically to a condemnation’s effect on the property.” He contends that the court’s reliance on Gold’s opinion ran afoul of *Larobina* for two reasons: (1) Gold’s estimation of a 10 percent decrease in market rental value was arbitrary because it was mere conjecture and not supported by any qualitative analysis; and (2) Gold’s opinion was speculative because it was predicated, at least in part, on the existence of construction noise and dust at the property, yet there was no evidence in the record of noise and dust resulting from the construction. For the reasons that follow, we disagree with the commissioner that *Larobina* compels us to reverse the trial court’s severance damages award, and, instead, we defer to the weight that the court, as the sole arbiter of credibility, afforded to Gold’s opinion.

We first set forth our standard of review and relevant legal principles. “In a condemnation matter, it is the condemnee’s burden to show loss or damages in excess of the condemnor’s figures. . . . When only a portion of a party’s property is taken, the landowner is entitled not only to compensation for the value of the property taken, but also to severance damages for the diminution in the value of the landowner’s remaining property that the severance of a portion of the property causes.” (Citations omitted; internal quotation marks omitted.) *Commissioner of Transportation v. Chudy*, 219 Conn. App. 202, 207–208, 295 A.3d 128 (2023). “[I]n highway easement cases . . . the landowner is entitled to compensation for severance damages that might result from prospective uses of the easement as well as the damages

immediately flowing from the presently contemplated highway improvement project for which the land was taken.” *Alemanly v. Commissioner of Transportation*, 215 Conn. 437, 445, 576 A.2d 503 (1990). Severance damages may be awarded, for instance, “[i]f, on the date of the taking, a prospective purchaser had known that for several years the property would be covered with debris, that he would suffer discomfort, and that traffic in front of the [property] would increase, it is reasonable to believe that the price he would pay for the property would be affected.” *Bowen v. Ives*, supra, 171 Conn. 238.

“[T]he purpose of offering in evidence the opinions of experts as to the value of land is to aid the trier to arrive at his own conclusion, which is to be reached by weighing those opinions in the light of all the circumstances in evidence bearing upon value and his own general knowledge of the elements going to establish it. . . . In a condemnation case, the [court] is more than a trier of facts or an arbiter of differing opinions of witnesses. [The court] is charged . . . with the duty of making an independent determination of value and fair compensation in the light of all the circumstances, the evidence, [its] general knowledge and [its] viewing of the premises.” (Citations omitted; internal quotation marks omitted.) *Id.*, 239. “Ultimately, the determination of the value of the property [is] a matter of opinion and depend[s] on the considered judgment of the [trial court], taking into account the divergent opinions expressed by the witnesses and the claims advanced by the parties.” (Internal quotation marks omitted.) *Dept. of Transportation v. Cheriha, LLC*, 155 Conn. App. 181, 191, 112 A.3d 825 (2015); see also *Commissioner of Transportation v. Rocky Mountain, LLC*, 277 Conn. 696, 728, 894 A.2d 259 (2006) (in condemnation action, “‘question of what is just compensation is an equitable one rather than a strictly legal or technical one’”).

Because “[v]aluation is a matter of fact to be determined by the [court’s] independent judgment,” the trial court “has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as [the court] finds applicable; [the court’s] determination is reviewable only if [it] misapplies, overlooks, or gives a wrong or improper effect to any test or consideration which it was [its] duty to regard. . . . On appeal, this court must determine whether the decision of the trial court is clearly erroneous. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (Citations omitted; internal quotation marks omitted.) *Commissioner of Transportation v. Chudy*, supra, 219 Conn. App. 208.

Additionally, “[i]t is well settled that [t]he weight to be given the evidence and the credibility of the witnesses are within the sole province of the trial court. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . [T]he trial judge . . . is free to accept or reject, in whole or in part, the testimony offered by either party. . . . Because it is the trial court’s function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court’s ruling.” (Citation omitted; internal quotation marks omitted.) *Id.*, 209; see also *Abrams v. PH Architects, LLC*, 183 Conn. App. 777, 800, 193 A.3d 1230 (“[if] expert testimony conflicts, it becomes the function of the trier of fact to determine credibility’ ”), cert. denied, 330 Conn. 925, 194 A.3d 290 (2018).

In light of the foregoing, we turn to the commissioner’s contention that *Larobina* compels us to reverse the court’s reliance on Gold’s opinion. In *Larobina*, the defendant appealed to this court from the trial court’s reassessment of damages resulting from a partial taking by the commissioner. *Commissioner of Transportation v. Larobina*, supra, 92 Conn. App. 17. The trial court “for the most part” agreed with the commissioner’s expert appraiser that there were no severance damages and expressly discredited the testimony of the defendant’s expert appraiser, Glucksman, but nevertheless awarded \$2500 of severance damages for the possibility that a future buyer may be wary that the commissioner retained the right to pave the partial taking area. *Id.*, 21–22. On appeal, the defendant argued, inter alia, that the court’s award of severance damages of just \$2500 was clearly erroneous because the court improperly had discredited Glucksman’s expert opinion with respect to severance damages. *Id.*, 22, 25. After outlining the deference that this court affords to a trial court’s credibility determination, this court rejected the defendant’s claim, stating that the trial court’s decision “suggest[ed] that the reason the court disregarded [Glucksman’s] estimate was because it found it to be without factual support and also because it found Glucksman in general to be severely lacking in credibility. Glucksman’s estimate of severance damages consisted of \$67,200 in lost rents; the court explicitly found that lost rents had not been proven. Additionally, the court characterized Glucksman’s testimony and report overall as inconsistent, inaccurate and speculative. . . . After reviewing Glucksman’s report and his testimony, we see no reason not to defer to the court’s assessment and rejection thereof.” (Citation omitted.) *Id.*, 25.

This court in *Larobina* provided several reasons why the trial court “understandably declined to adopt Glucksman’s estimate” as to severance damages. *Id.*, 25–27. Primarily, this court stated that “[t]he weight of an [expert appraiser’s] opinion is materially affected by the substantiating factual data that is introduced into evidence. See 5 P. Nichols, *Eminent Domain* [J. Sackman ed., 3d Ed. Rev. 2004] § 23.09, p. 23-125. ‘Some courts have stated that the opinion must be rejected in the absence of such supporting evidence, or in the event the supporting evidence is insufficient to justify the opinion.’ *Id.*, § 23.07 [1], pp. 22-72 through 22-74. ‘An opinion based on mere conjecture or guesswork has no probative value and is insufficient to sustain a [damages award].’ *Id.*, § 23.09, pp. 23-125 through 23-126; see also 27 [Am.] *Jur.* 2d 217, *Eminent Domain* § 591 (2004) (‘[n]o weight may be accorded to an expert opinion which is totally conclusory in nature and which is unsupported by any discernible, factually based chain of underlying reasoning’).” *Commissioner of Transportation v. Larobina*, *supra*, 92 Conn. App. 26. On the basis of these legal principles, this court held that the trial court reasonably afforded Glucksman’s opinion little weight because he estimated that the defendant’s rental income would sustain a 12 percent decrease; however, “[t]he portion of Glucksman’s report prefacing, and purportedly establishing, the 12 percent decrease, consists of a generalized, qualitative narrative discussing the negative effects of pollution, noise and inconvenience caused by vehicular traffic, citing to two newspaper articles as authority. Glucksman conceded at trial, however, that he had no statistics or documentary evidence regarding the traffic volume” *Id.*, 25–26. This court also highlighted other inconsistencies with Glucksman’s estimate, including that he improperly used contrasting valuation methods to estimate the before and after value of the property, and that he erroneously utilized improper statistics regarding the property, such as overstating the gross living area by one third, underestimating the age of the building, and assigning a square foot value that exceeded his comparable ranges. *Id.*, 26–27. In sum, this court concluded that the trial court’s severance damages award was not clearly erroneous because, “[t]aken together, it is not difficult to understand why the court afforded [Glucksman’s opinion] little weight.” (Internal quotation marks omitted.) *Id.*, 27.

Here, the commissioner contends that *Larobina* compels this court to *reverse* the trial court’s credibility assessment of Gold’s opinion because Gold’s opinion was arbitrary and speculative, just like Glucksman’s opinion in *Larobina*. We are not persuaded. Contrary to the commissioner’s argument, *Larobina* does not stand for the broad proposition, as the commissioner contends, that “Connecticut courts must reject an expert’s severance damages calculation when the expert estimates a decrease in value by using an arbitrary percent-

age factor that is not supported by evidence and a quantitative analysis relating specifically to a condemnation's effect on the property." On the contrary, *Larobina* made clear that this court on appeal will not reweigh the credibility of experts. *Id.*, 25. Indeed, this court repeatedly emphasized in *Larobina* that the weaknesses of the appraiser's opinion went to the *weight* that the trial court afforded to that opinion. *Id.*, 25–27. Although this court highlighted the arbitrary and speculative nature of Glucksman's opinion as reasons to support the trial court's decision to give little to no weight to that opinion; see *id.*, 27; it did not announce a rule that requires or permits us to reverse a court's factual finding whenever such a finding is based, at least in part, upon an expert's subjective analysis. As in *Larobina*, it was the function of the trial court in the present case, as the sole arbiter of credibility, to determine whether Gold's opinion was arbitrary and speculative, as the commissioner claimed, and to assign whatever weight it deemed appropriate to that opinion.

The commissioner has provided no authority, nor are we aware of any, in which this court has reversed a trial court's condemnation award that was made on the basis of an expert's opinion on the ground that such an opinion was the product of the expert's subjective views. Conversely, in line with *Larobina*, our appellate jurisprudence for at least six decades has consistently rejected this type of claim. See, e.g., *Melillo v. New Haven*, 249 Conn. 138, 151–54, 732 A.2d 133 (1999) (rejecting claim in condemnation action that trial court improperly weighed valuation opinions of parties' expert appraisers because "[i]t is the proper function of the court to give credence to one expert over the other"); *Pandolphe's Auto Parts, Inc. v. Manchester*, 181 Conn. 217, 221–25, 435 A.2d 24 (1980) (rejecting claim that trial court improperly relied on opinion of expert as to value of condemned property because "the trial court has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as [the trial court] finds applicable"); *Laurel, Inc. v. Commissioner of Transportation*, 180 Conn. 11, 36–46, 428 A.2d 789 (1980) (upholding trial court's award of severance damages amounting to lost profits in condemnation action and rejecting commissioner's claim that such profits were speculative and conjectural because trial court "may weigh the opinions of the appraisers, the claims of the parties in light of all the circumstances in evidence which bear on value, and his own general knowledge of the elements which pertain to value"); *Maykut v. Shugrue*, 171 Conn. 286, 288, 370 A.2d 923 (1976) (affirming trial court's decision to not award severance damages in condemnation action because court's independent judgment as to value of land is dependent on court's considered judgment, "taking into account the divergent opinions expressed by the witnesses and the claims advanced

by the parties”); *Humphrey v. Argraves*, 145 Conn. 350, 354–55, 143 A.2d 432 (1958) (rejecting claim that trial court improperly discredited credit expert witness’ testimony as to value of condemned property because “ [n]othing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony’ ”); *Commissioner of Transportation v. Chudy*, supra, 219 Conn. App. 210–11 (upholding trial court’s award of severance damages because, although testimony of experts conflicted, “[i]t was within the exclusive province of the court, as the trier of fact, to make those credibility determinations, which we may not second-guess”); *Cavanagh v. Richichi*, 212 Conn. App. 402, 424–25, 275 A.3d 701 (2022) (rejecting claim that trial court improperly credited arbitrary opinion of expert witness with respect to amount of fair market rent because “ ‘trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible’ ”); *Merrell v. Southington*, 42 Conn. App. 292, 297–98, 679 A.2d 404 (rejecting claim that trial court improperly determined value of condemned property on ground that it failed to give appropriate weight to testimony of expert appraiser because “trial court limited the value that it placed on the plaintiff’s appraiser’s testimony because it determined that the testimony was not credible”), cert. denied, 239 Conn. 918, 682 A.2d 1003 (1996); *Sorenson Transportation Co. v. State*, 3 Conn. App. 329, 333, 488 A.2d 458 (rejecting claim that trial court improperly relied on opinion of expert as to value of condemned property because “trial court was presented with conflicting evidence and it is apparent that credibility was a crucial factor” and “[w]e cannot retry the facts or pass upon the credibility of witnesses”), cert. denied, 196 Conn. 801, 491 A.2d 1105 (1985).

If the commissioner believed that Gold’s opinion was too arbitrary or speculative to support an award of severance damages, the proper method to preclude the court’s reliance on that opinion was to challenge the admissibility of Gold’s opinion on those grounds by way of a pretrial motion in limine or an objection at the evidentiary hearing. The issue of whether an expert’s opinion as to valuation is too speculative or arbitrary to warrant consideration is often determined as a threshold evidentiary matter. See, e.g., *Kohl’s Dept. Stores, Inc. v. Rocky Hill*, 219 Conn. App. 464, 480, 486, 295 A.3d 470 (2023) (analyzing whether court properly admitted into evidence valuation opinion over objection that opinion was speculative and depended on flawed data); *Banco Popular North America v. du’Glance, LLC*, 146 Conn. App. 651, 657–60, 79 A.3d 123 (2013) (analyzing whether court properly denied motion in limine to preclude expert valuation opinion on ground that opinion was unreliable); see also Conn. Code Evid. §§ 7-2 and 7-4. The commissioner, however, never challenged the admissibility of Gold’s opinion. Prior to the

evidentiary hearing, the commissioner did not file a motion in limine challenging the admissibility of Gold's opinion. Moreover, at that evidentiary hearing, the commissioner's counsel stipulated that Gold was an expert appraiser and did not object to the introduction of Gold's report into evidence or to Gold's testimony with respect to severance damages.

Accordingly, Gold's opinion was admitted into evidence without objection, and the court was free to use, or not use, that opinion as it saw fit to reach its independent finding regarding a reasonable valuation of severance damages. See *Banco Popular North America v. du'Glance, LLC*, supra, 146 Conn. App. 659–60 (“[t]he court was free to accept or reject in whole or in part the evidence before it regarding valuation”). Here, the court carefully considered the commissioner's contention that Gold's opinion was arbitrary or speculative. At the evidentiary hearing, the court posed its own questions to the expert valuation witnesses, including inquiries as to how Gold arrived at his 10 percent estimate. Gold was subject to adept cross-examination by the commissioner's counsel, who thoroughly questioned Gold as to the factual basis for his decision that noise and dust affected the market rental value of the property and the methodology, if any, he used to arrive at his 10 percent estimate. The commissioner presented the testimony of Kerr, who offered his own contrasting opinion on severance damages and characterized Gold's opinion as arbitrary. In his posttrial written submissions, the commissioner, relying on *Larobina*, advanced well articulated arguments as to why the court should reject Gold's opinion. Nevertheless, the court, as the sole arbiter of credibility, expressly rejected the commissioner's arguments that Gold's opinion was arbitrary and speculative, credited Gold's opinion, and determined the amount of severance damages. The commissioner on appeal disagrees with the court's credibility assessment, but that is not a basis on which we can reverse the court's judgment. In sum, we conclude that the court's severance damages award was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

¹ The commissioner, in his notice of condemnation and assessment of damages, named four other defendants: U.S. Small Business Administration, Fairfield County Bank, Ridgefield Bank Mortgage Corporation, and Strawberry Hill Animal Hospital, LLC. ACP, LLC, and Strawberry Hill Animal Hospital, LLC, were the only defendants that appeared before the trial court. All references to the defendant in this opinion are to ACP, LLC, because it is the only defendant that has participated in this appeal.

² Section 13a-73 (b) was the subject of a technical amendment in 2018; see Public Acts 2018, No. 18-62, § 1; however, that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.