United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR, Complainant, v. TOUSLEY PROPERTY MANAGEMENT LLC, Respondent.	OSHRC DOCKET No. 16-1442

ORDER

The parties have filed an executed settlement agreement that resolves the issues pending before the Commission.

Among its provisions, the settlement agreement amends the originally issued single alleged violation of the construction industry fall protection standard set forth at 29 C.F.R. § 1926.501(b)(13) from a willful violation with a proposed penalty of $14,000, to a serious violation with an agreed penalty of $11,200.

The settlement agreement recites that the violative condition alleged in the original single citation item had been abated during the inspection that had been conducted on June 27, 2016. However, the settlement agreement also contains other provisions under which the Respondent agrees to take additional certain measures that are in the nature of abatement (e.g., agreeing "to implement a pre-job checklist to ensure … that appropriate fall protection is utilized on all jobsites where it requires employees to work"). The parties agreed that the original citation was "now deemed amended to include any abatement measures, as well as the agreements as to actions to be taken by Respondent which are described" in the settlement agreement.

The settlement agreement also provides that the Respondent agrees to withdraw its notice of contest.

As part of the filing of the settlement agreement, the Respondent certified pursuant to Commission Rule 100(c), 29 C.F.R. § 2200.100(c), that on May 26, 2017 the settlement agreement had been posted in the manner required by 29 C.F.R. § 2200.7(g) and § 1903.16.

On June 6, 2017, the Commission received a letter dated May 31, 2017, bearing the signature of Ms. Tiffany Rogers, who identified herself to be the Office Manager of the Respondent. Ms. Rogers stated that she was writing "to express my strong objection to the Settlement Agreement," on the grounds that the magnitude of the agreed penalty will negatively affect the Respondent, the Respondent's employees, and the Respondent's "tenants."

As described below, Ms. Rogers' stated objections are beyond the scope of the Commission's authority to consider in determining whether to approve a settlement agreement entered into between the Secretary and a cited employer.

It is firmly established that with respect to a settlement agreement made between the Secretary and a cited employer and tendered to the Commission for approval, the only aspect of the agreement to which affected employees (or an authorized employee representative of affected employees) have the right to object is the reasonableness of the period of time for the employer to abate the violative condition. *United Steelworkers of Am., Local No. 185 v. Herman*, 216 F.3d 1095, 1098 (D.C. Cir. 2000) (noting that "[e]very circuit that has examined the issue has held that when a case settles, and the employer withdraws its contest to the citation, employees may only challenge–and the Commission may only consider–the reasonableness of the abatement time"); 29 U.S.C. § 659(c); Commission Rule 100(c), 29 C.F.R. § 2200.100(c).

Ms. Rogers' letter does not set forth any objection to the reasonableness of the period of time for the Respondent to complete the abatement-type measures set forth in the settlement agreement. Her letter thus does not provide a legally cognizable basis either for conducting a hearing on her objection pursuant to Commission Rule 100(c), or for disapproving the tendered settlement agreement.

Accordingly, the settlement agreement is hereby approved in its entirety and is incorporated herein by reference as a part of this order.

SO ORDERED.

/s/
WILLIAM S. COLEMAN
Administrative Law Judge

DATED: June 28, 2017