



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.

ALL STAR REALTY COMPANY, INC.,
d/b/a ALL STAR REALTY &
CONSTRUCTION CO.,

Respondent.

OSHRC Docket No. 12-1597

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:

- (1) Did the Secretary establish that All Star Realty Company (“All Star”) was an employer of the workers referenced in the citation? In addressing this question, the parties are asked to discuss the evidence in this case as it relates to the factors set out in *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 323-24 (1992). See *Sharon & Walter Constr., Inc.*, 23 BNA OSHC 1286, 1289, 2011 CCH OSHD ¶ 33,103, pp. 54,896-97 (No. 00-1402, 2010). In particular, the parties should address the factors relating to the extent of All Star’s “right to control the manner and means by which the product [was] accomplished,” including:
 - (a) the extent of the workers’ discretion over when and how long to work;
 - (b) whether All Star had the right to assign additional projects to the workers;
 - (c) the source of the instrumentalities and tools used by the workers; and
 - (d) the method of payment.
- (2) In answering the employment relationship question, the parties are asked to identify what assignment and instructions, if any, All Star gave to the workers with respect to the site where the subject inspection was conducted.
- (3) If an employment relationship existed, did the judge err in concluding that the Secretary failed to establish that All Star had constructive knowledge of the violative conditions?

The parties are advised that when the merits or characterization of an item are before the Commission for review, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the Commission in writing setting forth the reason therefor within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: March 21, 2013

/s/ _____
Ray H. Darling, Jr.
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.