



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 One Lafayette Centre
 1120 20th Street, N.W. — 9th Floor
 Washington, DC 20036-3419

PHONE:
 COM (202) 606-5100
 FTS (202) 606-5100

FAX:
 COM (202) 606-5050
 FTS (202) 606-5050

SECRETARY OF LABOR,

Complainant,

v.

OZARK WOOD GALLERY,

Respondent.

OSHRC Docket No. 94-3292

ORDER

On March 2, 1995, the Chief Administrative Law Judge issued an order dismissing the notice of contest filed by respondent Ozark Wood Gallery (“Ozark”) for its failure to file an answer or respond to an order to show cause. In its petition for discretionary review, Ozark alleges that it “has no employees and never has had any employees.” However, the Secretary alleges in his complaint that Ozark had approximately six employees at the time of the inspection.

We do not condone Ozark’s failure to file an answer or its failure to respond to the judge’s order to show cause and find that, in so doing, Ozark has waived its right to contest the merits of the citation. However, in alleging that it “has no employees and never has had any employees,” Ozark raises a question of jurisdiction, which can be raised at any time during Commission proceedings. *Willamette Iron & Steel Co.*, 9 BNA OSHC 1900, 1904, 1981 CCH OSHD ¶ 25,427; p.31,699 (No. 76-1201, 1981); Fed. R. Civ. P. 12(h)(3). The record is insufficient to resolve this issue. We therefore remand this case to the judge to take

additional evidence and to make the necessary findings of fact and conclusions of law on the jurisdictional issue. *See, e.g. Loomis Cabinet Co.*, 15 BNA OSHC 1635, 1991-93 CCH OSHD ¶ 29,689 (No. 88-2012, 1992), *aff'd*, 20 F.3d 938 (9th Cir. 1994). In the event the judge finds that jurisdiction exists, then the citation items shall be affirmed based on Ozark's failure to file an answer and its failure to respond to the judge's order to show cause.

Stuart E. Weisberg

Stuart E. Weisberg
Chairman

Velma Montoya

Velma Montoya
Commissioner

Dated: June 9, 1995

NOTICE OF REMAND ORDER

The attached Remand Order by the Occupational Safety and Health Review Commission was issued and served on the following on June 9, 1995.

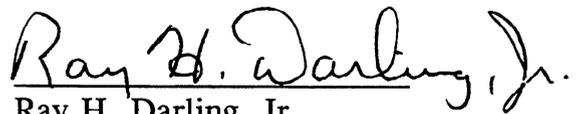
Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, USDOL
200 Constitution Ave., N.W. Room S4004
Washington, D.C. 20210

Tedrick A. Housh, Jr., Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
1210 City Center Square
1100 Main Street
Kansas City, MO 64105

Elton Botard
Ozark Wood Gallery
Highway 63 South
Brandsville, MO 65688

Irving Sommer
Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, Suite 990
Washington, D.C. 20036-3419

FOR THE COMMISSION


Ray H. Darling, Jr.
Executive Secretary



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SECRETARY OF LABOR
Complainant,
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Respondent.

**OSHRC DOCKET
NO. 94-3292**

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 3, 1995. The decision of the Judge will become a final order of the Commission on April 3, 1995 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before March 23, 1995 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: March 3, 1995

DOCKET NO. 94-3292

NOTICE IS GIVEN TO THE FOLLOWING:

**Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210**

**Tedrick Housh, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
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**Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
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Washington, DC 20036 3419**

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