

Decision No. C04-0197

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-070BP

IN THE MATTER OF THE MOTION OF ARKO EXECUTIVE SERVICES, INC., TO REINSTATE CONTRACT CARRIER PERMIT PUC NO. B-9774.

**ORDER CONSTRUING LETTER AS APPLICATION
FOR EXCEPTIONS AND GRANTING APPLICATION**

Mailed Date: February 26, 2004
Adopted Date: February 25, 2004

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. This matter comes before the Commission for consideration of a letter requesting the reinstatement of Contract Carrier Permit No. B-9774 filed by Arko Executive Services, Inc., (Arko Executive Services), on February 18, 2004. In Decision No. R04-0156 (Recommended Decision) an Administrative Law Judge (ALJ), after a hearing on the matter, ordered that Arko Executive Services' operating authority be revoked for failure to keep a currently effective Certificate of Insurance on file with the Commission. This request to reinstate Contract Carrier Permit No. B-9774 only pertains to that portion of the Recommended Decision that deals with Arko Executive Services operating authority (Case No. 06035-INS).

2. On January 20, 2004, the Commission received a Form K cancellation notice from Arko Executive Services' insurance provider, Hartford Fire Insurance Company. That cancellation was to become effective February 9, 2004. The Commission issued a Notice of Hearing and Order to Show Cause for failure to keep a currently effective Certificate of Insurance on file with the Commission on January 26, 2004. After a hearing on January 13, 2004, the ALJ

issued the Recommended Decision revoking Arko Executive Services' Contract Carrier Permit No. B-9774. Decision No. R04-0156 was mailed on February 13, 2004.

3. Section 40-6-109(2), C.R.S., mandates that if no exceptions are filed to a recommended decision within 20 days, such decision shall become effective as the decision of the Commission by order of law. In this instance, Arko Executive Services filed its letter requesting the reinstatement of Contract Carrier Permit No. B-9774 within the 20-day period. We therefore construe Arko Executive Services' letter of February 18, 2004, as exceptions to Recommended Decision No. 04A-0156.

4. In this letter, Robert Arko, the district manager of Arko Executive Services, states "Ownership of Arko Executive Services, Inc., was transferred to U. S. Security Associates, Inc., on August 1, 2003. We were not aware of the requirement to file a transfer application until today, February 18, 2004. We were notified in sufficient time to file a Schedule E with endorsements, which we completed in good faith on January 28, 2004, prior to the scheduled hearing on February 9, 2004. We only learned today, February 18, 2004, that the Schedule Form E filed on our behalf by Continental Casualty Company was considered invalid due to the transfer of ownership that occurred on August 1, 2003, even though we continue to do business in Colorado as Arko Executive Services. We understand that we must file a transfer application with the Colorado PUC, and have already made arrangements with your staff to acquire the application forms to ensure this process."

5. The Schedule E that Mr. Arko states was filed on January 28, 2004, is the Form E, Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, that is required by Commission Rule (4 CCR) 723-31-12.3. However, this Form E was not filed

in the exact name shown in Commission records as required by Rule (4 CCR) 732-31-12.3.1. The name of the motor carrier listed on Form E is U. S. Security Associates, Inc., doing business as Arko Executive Services. Therefore, Arko Executive Services does not currently have the required insurance for Contract Carrier Permit No. B-9774 on file with the Commission. The name set forth in Commission records is Arko Executive Services, Inc. because no application to transfer ownership of the Permit to U.S. Security Associates was filed.

6. In the letter received by the Commission on February 18, 2004, Mr. Arko states he has acquired the Commission forms necessary to file an application to transfer Contract Carrier Permit No. B-9774 from Arko Executive Services, Inc., to U. S. Security Associates, Inc., doing business as Arko Executive Services. The application to transfer Contract Carrier Permit No. B-9774 will be addressed in a separate docket.

7. The Commission finds that Arko Executive Services has shown good cause to postpone the revocation of Contract Carrier Permit No. B-9774 as ordered in Decision No. R04-0156. We therefore grant Arko Executive Services' exceptions to the Recommended Decision, and stay the ALJ's decision to revoke Arko Executive Services' authority. However, if the required application to transfer Contract Carrier Permit No. B-9774, is not filed within 14 days of the mailed date of this order, Arko Executive Services is advised that Contract Carrier Permit No. B-9774 will be revoked. In addition, if the requested transfer of Contract Carrier Permit No. B-9774 is not granted, Arko Executive Services Contract Carrier Permit No. B-9774 will be revoked.

II. ORDER

A. The Commission Orders That:

1. The letter requesting reinstatement of common carrier Contract Carrier Permit No. B-9774 filed by Arko Executive Services on February 18, 2004, is construed as exceptions to Decision No. R03-0156 pursuant to § 40-6-109, C.R.S.

2. That portion of Decision No. R04-0156 revoking Arko Executive Services (Case No. 06035-INS) Contract Carrier Permit No. B-9774 is stayed, and Certificate of Public Contract Carrier Permit No. B-9774 is not revoked.

3. Arko Executive Services shall file within 14 days of the mailed date of this order, an application to transfer Contract Carrier Permit B-9774 to U.S. Security Associates, Inc. If Arko Executive Services Inc. does not file the required application within the 14 days, Contract Carrier Permit B-9774 shall be deemed revoked.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
February 24, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

I/TRANS/ORDERS/04M-070BP