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LCC 960/C-93-234

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

State of Minnesota,
by its Commissioner
of Transportation,

v.

Chase Security Corporation,
a Minnesota Corporation,
Daniel J. Seman and Richard T.
Murphy, Sr.

FINDINGS_OF_FACT,
CONCLUSIONS_AND
RECOMMENDED_ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the State Office of Administrative Hearings on April 5, 1994, at the offices of the Transportation Regulation Board in South St. Paul, Minnesota.

Appearances: Melissa L. Wright, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Department of Transportation (Department or MNDOT); and James B. Hovland, Krause & Rollins, Attorneys at Law, 310 Groveland Avenue, Minneapolis, Minnesota 55403, appeared on behalf of Chase Security Corporation and Daniel J. Seman (Chase Security Corporation, Corporation, or Respondent).

The record of the proceeding closed on April 15, 1994, with the receipt by the Administrative Law Judge of a letter declining further briefing sent by counsel for the Respondent.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and

served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether Chase Security Corporation, its president, Mr. Daniel Seman and Mr. Richard T. Murphy Sr., have violated Minn. Stat. P«221.021 and P 221.151 (1992) and, if so, whether it is appropriate to issue a cease and desist order against further violations under Minn. Stat. P«221.293 (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 22, 1993, the Department of Transportation filed with the Transportation Regulation Board a complaint alleging that Chase Security Corporation and its president, Daniel J. Seman, have been operating as a motor carrier and

2. Chase Security Corporation is a Minnesota corporation that has engaged in a variety of activities, including the transportation of checks and currency and coins, providing limousine services and providing business security services. The owner of the corporation, Mr. Daniel J. Seman, is also a Deputy County Coroner of Anoka County and is developing a funeral home business.

3. In November of 1990, Mr. Seman, on behalf of Chase Security Corporation, entered into a contract with Honeywell, Inc., to provide cash transportation security service to Honeywell. Chase Security would deliver

cash and coinage between various locations within Honeywell property for use by cashiers. See Ex. 16. Chase Security personnel would also do an on-foot distribution of cash and coinage between various locations within Honeywell plants. A small portion of the total security service Chase Security provides to Honeywell is concerned with the transportation of such cash and coinage and its distribution within Honeywell facilities. Approximately 25 percent of that small percentage of business for Honeywell also admittedly involves the transportation of money over the road to Norwest Bank and to and between the Honeywell facilities in the Twin Cities, including Golden Valley, St. Louis Park and Coon Rapids.

4. As early as October of 1990, Mr. Seman was notified by the Office of Motor Carrier Services that he would need a motor carrier permit to conduct the transportation activities for Honeywell, Inc. described in Finding 3, supra.

5. On October 26, 1990, Chase Security Corporation petitioned for contract carrier permit authority to service Honeywell for the transportation of lunchroom money from and between cashiers in Honeywell locations, located in the Counties of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota. When the application was protested, Chase Security withdrew its application.

6. On March 13, 1991, Chase Security filed another petition for courier services carrier permit authority for the account of Honeywell, Inc. and later withdrew that application.

7. On April 22, 1992, Chase Security filed another application for contract carrier permit authority to serve Cenaiko Productions, Honeywell, Inc. and Alliantech Systems, a spin-off of Honeywell, Inc. The accounts involved the transportation of coin, currency, secured documents, and other valuables. The petition was dismissed on April 22, 1992, at the Petitioner's request. That dismissal was later rescinded by the Board at Chase's request. On April 14, 1993, the Board again dismissed the request for contract carrier permit authority at the request of Chase.

8. The pattern of action adopted by Chase since 1990 appears to be as follows: engage in flagrant illegal action until detected by DOT and the filing of a complaint, then request motor carrier authority, causing MNDOT to relax enforcement efforts, and, finally, withdraw the request for authority if protested, all the while continuing the illegal activity.

9. On October 29, 1993, a joint petition for the transfer of Murphy's LCC permit to Chase was filed with the Office of Motor Carriers of the Department of Transportation. The application was returned to the attorney for Chase because of incorrect information provided on the application.

10. On December 28, 1993, an attorney for Chase Security submitted a

conversion application to the Board. The application for conversion was later denied. Ex. 39. In connection with that application altered documents were submitted to the Board. See Finding 19, infra.

11. Under its contract with Honeywell, Chase Security dedicates one truck to Honeywell from 7:00 a.m. to 3:30 p.m., Monday through Friday.

12. Chase Security has also been providing armored car service to Alliantech Systems, Inc. for cashier pickups between banks and Alliantech locations, since January 3, 1991. See Ex. 23. The purchase order agreement between C January of 1991, requires Chase Security to dedicate one truck to Alliantech from 7:45 a.m. to 11:45 a.m., Monday through Friday. Alliantech is a spin-off of Honeywell. In March of 1992, Alliantech Systems, Inc. and Chase Security Corporation entered into a contract for transportation services, signed by Chase Securities as carrier. At that time, Chase Security had no motor carrier authority.

13. In April of 1993, Mr. Seman executed a contract with Valley Fair, One Valley Fair Drive, Shakopee, Minnesota, as shipper on behalf of Chase Armored as carrier. Lyle Jaeger, who signed on behalf of Valley Fair, dealt exclusively with Mr. Seman and identified Mr. Seman with Chase Security Corporation. The address for Chase Armored given at the bottom of the contract, contained in Ex. 9, is the address of Chase Security Corporation. Valley Fair received dedicated service and paid invoices supplied on Chase Security Corporation letterhead by check made out to Chase Security Corporation. See Ex. 11, Ex. 12, Ex. 13, and Ex. 14. The agreement with Valley Fair was executed at about the time Mr. Seman made the arrangements with Mr. Murphy hereinafter described.

14. On March 29, 1993, Chase Security Corporation and Mr. Richard T. Murphy, Sr., entered into a purported Agency Agreement under which Chase would act as agent for Richard T. Murphy, Sr. who held an inactive LCC authority as previously discussed. On the same date, the two parties entered into a Contractor Operating Agreement whereby Chase Security Corporation, as contractor, leased to Richard Murphy described equipment so that Chase Security Corporation could, in effect, use its own equipment to develop the Murphy authority for whom it was purporting to act as agent under Chase Ex. A. See Chase Ex. B. Prior to the agreement with Mr. Seman, Mr. Murphy had not been providing any armored service and his LCC authority was not being actively exercised.

15. Under the various agreements, and as admitted at the hearing, the following activities have occurred: Chase Security hires, trains, and supervises drivers for the Chase Armored operation; Chase Security is responsible for making sure drivers are qualified; Chase Security keeps the driver records required by the rules; Chase Security owns or leases the vehicles used to provide the transportation services; Chase Security maintains

and services the vehicles; Chase Security keeps the vehicle records required by the rules; Chase Security obtains and pays for insurance required by the rules; Chase Security owns or leases the office space and equipment used in conducting the motor carrier operation; Chase Security solicits shippers for business; Chase Security negotiates rates with shippers; Chase Security is responsible for meeting a shipper's request for service; Chase Security bills shippers for transportation services rendered, often, in the past, on its own stationery; Chase Security receives the revenue; Chase Security has the authority to write checks on the bank account into which the revenue is deposited; Chase Security pays for the expenses of operating the vehicles; Chase Security dispatches drivers and trucks; Chase Security obtains and pays for workers' compensation coverage for those employees needed for the motor carrier operation; Chase Security complies with state and federal employment tax laws; Chase Security prepares bills of lading; and Chase Security arranges for advertising the transportation services. See Chase Ex. A and B; Cross Examination of Mr. Robert Lee.

16. The only active connection that Mr. Richard T. Murphy, Sr. has had with the motor carrying operation is to purchase the cab cards out of funds provided by Chase and allow his name to be used on the insurance forms, with the insurance coverage for the motor carrier operation paid for by Chase Security. Chase Security makes a periodic "settleup" with Mr. Murphy and pays him an agreed upon share of revenues. Mr. Murphy also has a contingent liability in the eve

17. Neither Honeywell, nor Alliantech, nor Valley Fair had any business contact with Mr. Murphy. All contacts were made directly with Daniel Seman, the president and chief operating officer of Chase Security Corporation. The customers have never been notified directly that Mr. Murphy is, in fact, providing service through Mr. Seman's corporation. Moreover, many record exhibits show invoices and payments for services made directly to Chase Security Corporation.

18. Prior to his association with Mr. Seman's corporation, Mr. Murphy had never been involved in the armored car business, although his LCC permit would have authorized some such activity. Mr. Murphy also changed his operative d/b/a to Richard T. Murphy, d/b/a Chase Armored, sometime after his association with Chase Security. The similarity of the two names has caused significant consumer confusion, with customers believing that Mr. Seman was providing service on behalf of his own corporation.

19. Either in the conversion application or at the hearing, Mr. Seman's Corporation produced forged, altered or deceptive documents in an attempt to mislead the Transportation Regulation Board. See Ex. 39 - 42. Invoices were submitted in the conversion hearing showing appropriate moves. The original documents which were produced at the complaint proceeding, showed violations of

the Board's leasing rules.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Transportation Regulation Board have jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was given and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. In the past, the Corporation, Chase Security Corporation, and its president, Daniel J. Seman, have provided illegal transportation services to Honeywell and Alliantech Systems by transporting coin and currency for such customers without the permit required by Minn. Stat. § 221.021 (1992).

4. The purported Lease Agreement and Operator Agreement between Richard T. Murphy, Sr., d/b/a Chase Armored, and Chase Security Corporation constitute an illegal lease of a permit in violation of Minn. Stat. § 221.151 (1992).

5. By consistently engaging in past illegal activity and by offering altered documents in a transportation regulation proceeding, Chase Security Corporation and its president, Daniel J. Seman, have demonstrated their unfitness to provide motor carrier services in the state of Minnesota, within the meaning of Minn. Rule 7800.0100, subp. 4 (1991), and Minn. Stat. § 221.151 (1992).

6. Any Conclusion more properly considered a Finding of Fact, and any Finding of Fact more properly considered a Conclusion, is hereby adopted as such.

Based on the foregoing Conclusions, it is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

Chase Security Corporation, its president, Daniel J. Seman, individually, and Richard T. Murphy, Sr., individually, are hereby restrained from violating Minn. Stat. § 221.021 and Minn. Stat. § 221.151 (1992) by continuing their business relationship as contained in an Agency Agreement dated March 29, 1993, by and between Richard T. Murphy, carrier, and Chase Security Corporation, agent, and a Contractor Operating Agreement dated March 29, 1993, between Richard T. Murphy, as carrier, and Chase Security Corporation, as contractor insofar as that business relationship violates the leasing rules of the Board contained in Minn. Rules, pt. 7800.2500, et seq.

Dated this 20 day of May, 1994.

s/Bruce_D._Campbell_____

BRUCE D. CAMPBELL