

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-143199
PENALTY AMOUNT: \$1,900

GUS & JACK MOVING COMPANY, LLC
1216 182ND STREET SW
LYNNWOOD, WA 98037

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-15-560 – Equipment safety requirements, which requires household goods carriers to comply with parts of Title 49, Code of Federal Regulations (CFR), Part 396 - Inspection, repair and maintenance, and WAC 480-15-570 – Driver safety requirements, which requires household goods carriers to comply with CFR Part 391 – Qualification of drivers.

On August 4, 2014, Motor Carrier Safety Inspector Alan Dickson conducted a compliance review inspection of Gus & Jack Moving Company, LLC (Gus & Jack Moving). Mr. Dickson found 38 total violations – 35 of these included violations of the following critical regulations:

- **17 violations of CFR Part 391.45(a)** – Using a driver not medically examined and certified. Driver Ghassan Mansour drove 17 days in July without a valid medical certificate.
- **16 violations of CFR Part 396.11(a)** – Failing to require a driver to prepare a vehicle inspection report. The company failed to have its drivers prepare vehicle inspection reports on 16 separate days.
- **Two violations of CFR Part 396.17(a)** – Using a commercial motor vehicle not periodically inspected. Neither of Gus & Jack's Moving's two vehicles has received a periodic inspection in the past 12 months.

Although authorized to assess \$3,500 in penalties for these violations, the Commission finds that a lesser penalty would be more appropriate based on consideration of the following factors:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Drivers who are not medically certified put the traveling public at risk. If there is an undocumented medical condition or the driver logs too many hours, this could present serious safety concerns. In addition, vehicles that are not periodically inspected could potentially harm the public in the event of a malfunction or mechanical problem during transit.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the Company ignored staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.

On May 1, 2012, Motor Carrier Safety Inspector Bruce Grimm met with Gus Mansour, managing partner of Gus & Jack Moving, at the company's office in Lynnwood. Mr. Grimm provided technical assistance on the regulated aspects of the company's business. In August 2013, Gus Mansour and Ryan Mansour attended the Commission's household goods industry training.

Commission staff does not believe that the company ignored previous technical assistance. Staff believes the violations are based on lack of oversight by the company owner and do not appear to be intentional.

3. **Whether the company self-reported the violation.** Gus & Jack Moving did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Gus & Jack Moving has been cooperative with Commission staff. However, after the violations were noted, the company was asked to provide staff with a compliance plan for addressing each violation to ensure future compliance within 15 days. As of September 9, 2014, the company has not provided such a plan.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Gus & Jack Moving assured staff that it would correct the violations noted in the August 2014 compliance review; however, the company has not provided a compliance plan within 15 days as directed by staff.
6. **The number of violations.** The number of critical violations noted in the compliance review is significant because the company received a conditional safety rating. This means the company has 45 days to correct its safety management controls to ensure its safety rating improves.
7. **The number of customers affected.** Customers were not affected by these violations.

8. **The likelihood of recurrence.** Commission staff will conduct a follow-up inspection in early 2015. Staff expects the company will improve its safety management controls and avoid recurrence of these critical violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This Gus & Jack Moving's first compliance review, so the company has no previous history of violations or penalties.
10. **The company's existing compliance program.** Because the company has not submitted a compliance plan as directed, Commission staff is unaware of the company's existing compliance program.
11. **The size of the company.** Gus & Jack Moving reported approximately \$15,359 in gross intrastate operating revenue for 2013.

The critical violations noted in staff's August 2014 compliance review were first-time violations by Gus & Jack Moving. The Commission's Enforcement Policy outlines that some Commission requirements are so fundamental to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.¹

The Commission has weighed these factors and determined that Gus & Jack Moving should be penalized \$1,900 as follows:

- **\$200 for two violations of WAC 480-15-560, which adopts CFR Part 396,** as follows:
 - **One violation of CFR Part 396.11(a)** – Failing to require a driver to prepare a vehicle inspection report. The company failed to have its drivers prepare vehicle inspection reports on 16 separate days. This is a critical regulation but these are first-time violations, so we assess a penalty of \$100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.
 - **One violation of CFR Part 396.17(a)** – **Using a commercial motor vehicle not periodically inspected.** Neither of Gus & Jack's Moving's two vehicles has received a periodic inspection in the past 12 months. This is a critical regulation but these are first-time violations, so we assess a penalty of \$100 for

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.

- **\$1,700 for 17 violations of WAC 480-15-570, which adopts CFR Part 391,** as follows:
 - **17 violations of CFR Part 391.45(a)** – Using a driver not medically examined and certified. Driver Ghassan Mansour drove 17 days in July without a valid medical certificate. These are first-time violations, but the Commission grants no leeway with this type of violation. Drivers who are not medically certified put the traveling public at risk.

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective September 10, 2014.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-143199

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

- 1. **Payment of penalty.** I admit that the violation occurred and enclose \$_____ in payment of the penalty.
- 2. **Request for a hearing.** I believe that the alleged violation did not occur for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:
- 3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”