

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-161293

PENALTY AMOUNT: \$100

Kezele Rentals, LLC
d/b/a Affordable Limo Service
623 Shadbolt Road
Yakima, WA 98908

The Washington Utilities and Transportation Commission (Commission) believes that you have committed a violation of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In October 2016, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Kezele Rentals, LLC d/b/a Affordable Limo Service (Affordable Limo) and documented the following violation of a critical regulation:

- **One violation of CFR 391.45(a) – Using a driver not medically examined and certified.** On September 17, 2016 Affordable Limo owner Ryan Kezele operated a commercial vehicle without having been medically examined and certified.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Companies that use a driver who has not been medically examined and certified put the traveling public at risk. A driver with an undetected medical condition presents serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Affordable Limo applied for charter and excursion authority in May 2015. In the application, Affordable Limo owner Ryan Kezele acknowledged his responsibility for understanding and complying with applicable safety rules and regulations. Commission

staff provided new entrant technical assistance to Affordable Limo in July 2015. The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Affordable Limo was slow to respond to telephone and email communication from staff, produced minimal records, and was, at times, difficult to work with.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Affordable Limo has corrected most of the violations and is continues to make progress toward full compliance.
6. **The number of violations.** For a company this size, the number of violations is unremarkable, however, the company maintains virtually no driver or vehicle records. The carrier admitted one trip for compensation which is the basis for the single violation being penalized. Commission staff believes that the number of violation occurrences would have been higher if the company kept the required records. Four other critical-type violations did not receive penalties because the documentation failed to establish a pattern.
7. **The number of customers affected.** Affordable Limo reported traveling 100 miles in 2016, which suggests that a limited number of passengers and other members of the traveling public were likely put at risk.
8. **The likelihood of recurrence.** The Commission believes that recurrence is likely unless the company drastically changes its safety management practices.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has no history of violations or penalties.
10. **The company's existing compliance program.** Affordable Limo has no formal compliance program.
11. **The size of the company.** Affordable Limo is a small one-vehicle, one-driver operation. Affordable Limo reported 100 miles travelled and \$250 in gross revenue for 2015.

This is a first-time violation, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties.

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

The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Affordable Limo \$100 for violation of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Part 391, calculated as follows:

- One violation of CFR 391.45(a) – Using a driver not medically examined and certified. The Commission’s enforcement policy prescribes a penalty of \$100 for every day’s occurrence of this violation, even when, as here, it is a first-time violation. Therefore the Commission assesses a penalty of \$100 for this violation.

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 violation did not occur, you may deny committing the violation and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any 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.

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.
- Contest the occurrence of the violation.
- 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 take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective December 27, 2016.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-161293.

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. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe 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.

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.”