

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-180198

PENALTY AMOUNT: \$15,200

3Z MOVERS LLC
14428 88th Ave NE
Kirkland, WA 98034

The Washington Utilities and Transportation Commission (Commission) believes that 3Z Movers LLC (3Z Movers or Company) has committed violations of Washington Administrative Code (WAC) 480-15-550 Cargo Insurance, WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers; CFR Part 395 – Hours of Service of Drivers; and CFR Part 396 – Inspection, Repair, and Maintenance.

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

On February 28, 2018, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of 3Z Movers and documented the following violations:

- **Seventy-two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** 3Z Movers allowed employee Boubacar Zida to drive on 72 separate occasions without having been medically examined and certified. The violations occurred during a six month period between August 3, 2017, and January 14, 2018.
- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** 3Z Movers failed to maintain a driver qualification file for driver Boubacar Zida.
- **Fourteen violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to make a record of duty status using the appropriate method.** 3Z Movers allowed employee Boubacar Zida to drive without making a record of duty status using the appropriate method on 14 occasions. The Company's time records failed to meet the requirements for the short haul exemption.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** 3Z Movers failed to maintain a vehicle maintenance file for the carrier's commercial motor vehicle.

- **One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** 3Z Movers failed to maintain records of a periodic vehicle inspection.
- **Seventy-two violations of WAC 480-15-550 – Failing to obtain and maintain proper levels of cargo insurance.** 3Z Movers operated a commercial motor vehicle on 72 occasions without evidence of required cargo insurance. The violations occurred during a six month period between August 3, 2017, and January 14, 2018.
- **Four violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** 3Z Movers failed to obtain a criminal background check for its employees Ramde, Cody, Roy, and Ali.

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 violations noted are very serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, fail to document driver qualifications, fail to maintain minimum records of inspection and vehicle maintenance, or that use a commercial motor vehicle not periodically inspected put the traveling public at risk. A driver with an undetected medical condition or unknown qualifications presents serious safety concerns. In addition, companies operating without the minimum levels of required cargo insurance, or utilizing employees with unknown criminal histories, raise concerns about the security of the customers' belongings, as well as their personal safety.
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.

In the Company's September 26, 2013, application for household goods moving authority, Boubacar Zida, owner of 3Z Movers, acknowledged his Company's responsibility to understand and comply with applicable motor carrier safety rules.

On March 12, 2014, Inoussa Zida, an employee with 3Z Movers, attended household goods training provided by Commission staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On May 12, 2015, Commission Motor Carrier Investigator Alan Dickson completed a new entrant review of 3Z Movers, which resulted in a satisfactory safety rating. On June 8, 2015, the Commission issued an order granting 3Z Movers permanent household goods authority in the state of Washington.

On August 24, 2015, the Commission notified 3Z Movers by letter that it would cancel the Company's permit to operate as a household goods carrier if it failed to provide acceptable proof of insurance. On October 21, 2015, the Commission issued an order cancelling the Company's household goods permit for failure to file and maintain proof of insurance.

In the Company's March 16, 2016, application for household goods moving authority, Boubacar Zida, owner of 3Z Movers, acknowledged his Company's responsibility to understand and comply with applicable motor carrier safety rules.

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.** 3Z Movers presented very little paperwork throughout the entire scope of the investigation. Additionally, Boubacar Zida, owner of 3Z Movers, was not present for the closing interview on February 28, 2018.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company did not correct the violations as of the closing interview. The closing interview was conducted on February 28, 2018, by Commission Motor Carrier Investigator Francine Gagne.
6. **The number of violations.** In total, staff identified nine violation types with 167 individual occurrences.
7. **The number of customers affected.** The Company traveled 11,800 miles in 2017. A significant number of customers as well as members of the traveling public were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if 3Z Movers is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's second safety review. 3Z Movers has no history of previous violations or penalties.
10. **The Company's existing compliance program.** Boubacar Zida is responsible for hiring drivers, completing the driver's hours of service, maintaining driver qualification files, and maintaining vehicle maintenance files.
11. **The size of the Company.** 3Z Movers is a small company with one driver. The Company owned two vehicles in the previous 365 days prior to the routine safety investigation but sold one of the vehicles in 2017. The Company reported \$50,400 in gross revenue in 2017.

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 first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize 3Z Movers \$15,200 for violations of WAC 480-15-550 Cargo Insurance, WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, calculated as follows:

- Seventy-two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$7,200.
- One violation of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.
- Fourteen violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status using the appropriate method. These are first-time violations, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.
- Seventy-two violations of WAC 480-15-550 – Failing to obtain and maintain proper levels of cargo insurance. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$7,200.
- Four violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee. These are first-time violations of a fundamental safety

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

requirement. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$400.

This information, if proven 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 any or all of the violations did not occur, you may deny committing the violation(s) 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(s) 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 any or all of the violations 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. 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(s) 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 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 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 March 20, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180198

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 violations occurred and enclose \$15,200 in payment of the penalty.
- 2. **Contest the violations.** I believe that some or all of the alleged violations did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

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 violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

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.”