

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-180616
PENALTY AMOUNT: \$100**

America's Elite, Inc.
d/b/a Elite Movers
765 W Washington Street
Sequim, WA 98382

The Washington Utilities and Transportation Commission (Commission) believes that America's Elite, Inc. (Elite Movers or Company) has committed a violation of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, which adopts 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. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 17, 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a comprehensive intrastate investigation of Elite Movers and documented the following violation:

- **One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The carrier failed to maintain a driver's driving record in the driver's qualification file of employee Donald Hodge.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Moving companies that fail to maintain complete driver qualification files risk employing a disqualified driver, which is a serious safety concern.
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 its February 11, 2014, application for a household goods moving permit, owner Sean Ryan acknowledged the Company's responsibility to comply with applicable laws and regulations. On March 12, 2014, manager Robert Porrazzo attended household goods

training provided by Commission staff. Mr. Porrazzo also acknowledged receiving training pertaining to motor carrier safety regulations. The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violation.** The Company did not self-report the violation.
4. **Whether the company was cooperative and responsive.** Elite Movers was very cooperative throughout the review.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Upon notice of the violations, the Company corrected them throughout the investigation process.
6. **The number of violations.** In total, staff identified five violation types and a total of five individual occurrences.
7. **The number of customers affected.** The Company traveled 129 miles in 2017. The traveling public could have been affected by this violation.
8. **The likelihood of recurrence.** It is difficult for the Commission to determine if Elite Movers is likely to repeat this violation. However, the Company was very cooperative with staff and took appropriate steps to correct the safety violations documented in staff's report.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation.
10. **The company's existing compliance program.** Mr. Ryan and Mr. Porrazzo are responsible for the Company's safety compliance program.
11. **The size of the company.** Elite Movers is a small company with one driver and one vehicle. The Company reported \$11,837 in gross revenue for 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.

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

The Commission has considered these factors and determined that it should penalize Elite Movers \$100 for violation of WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 391, calculated as follows:

- One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$100.

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 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. 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 to contest the violations or 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.
- Contest the occurrence of the violation.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission’s web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 July 26, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180616

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 \$_____ in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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.”