

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-200737

PENALTY AMOUNT: \$2,400

Avatar Movers – Vancouver, LLC,
d/b/a Two Men and a Truck – Vancouver
600 SE Maritime Ave. Ste. 230
Vancouver, WA 98661

The Washington Utilities and Transportation Commission (Commission) believes Avatar Movers – Vancouver, LLC, d/b/a Two Men and a Truck – Vancouver, (Avatar Movers or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees, and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 390 – General Safety Regulations and 49 CFR Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On August 7, 2020, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Avatar Movers and documented the following violations:

- **One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Avatar Movers failed to conduct a criminal background check on employee Gregory Machiniak.
- **One violation of 49 CFR § 390.35 – Making or causing to make fraudulent or intentionally false entry on a required medical examiner's certificate.** The Company provided a falsified medical certificate with an altered expiration date.
- **One violation of 49 CFR § 391.15(a) – Using a disqualified driver.** Avatar Movers allowed driver Zakkary Lueck to operate a commercial motor vehicle with a suspended driver's license.
- **Twenty-one violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Gregory Machiniak to operate a commercial motor vehicle without a valid medical certificate on 21 occasions between January 29 and June 5, 2020.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) fail to conduct criminal background checks on their employees, (2) make fraudulent entries on employee's medical certificates, (3) use disqualified drivers, and (4) use drivers not medically examined and certified put their customers, their customers' belongings, and the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the company ignored Commission staff's (Staff) 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.

On February 14, 2018, the Commission received the Company's application for household goods moving authority. In the application, Eric Tremble, general manager of Avatar Movers, acknowledged the Company's responsibility to understand and comply with applicable safety laws and regulations.

On May 16, 2018, Bernardo Mandujano, location manager of Avatar Movers, attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On November 7, 2018, Eric Tremble attended household goods training provided by Staff and 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 violations.** The Company did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Avatar Movers was cooperative throughout the investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Avatar Movers completed a criminal background check on Gregory Machiniak. The Company has provided Staff with a letter stating that it has addressed corrective action for each violation, though no other evidence has been provided.
6. **The number of violations.** Staff identified nine violation types with a total of 37 individual occurrences.
7. **The number of customers affected.** Avatar Movers employs five drivers, operates four commercial motor vehicles, and reported 32,412 miles traveled in 2019. These safety violations present a public safety risk.

8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff and expressed a desire to come into compliance. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. Avatar Movers has no history of violations or penalties.
10. **The Company's existing compliance program.** Gregory Machiniak, general manager for Avatar Movers, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Avatar Movers currently operates four commercial motor vehicles and employs six drivers. The Company reported \$654,552 in gross revenue for 2019.

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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Avatar Movers \$2,400, calculated as follows:

- One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for this violation.
- One violation of 49 CFR § 390.35 – Making or causing to make fraudulent or intentionally false entry on a required medical examiner's certificate. The Commission assesses a penalty of \$100 for this acute violation.
- One violation of 49 CFR § 391.15(a) – Using a disqualified driver. The Commission assesses a penalty of \$100 for this acute violation.
- Twenty-one violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$2,100.

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

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 through evidence presented at a hearing or in writing. Alternatively, 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 the 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 violation(s) or for mitigation of the penalty 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 their 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(s).
- Admit the violations but request mitigation of the penalty amount.

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, PO 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 Lacey, Washington, and effective August 31, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-200737

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 \$2,400 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