

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-170293  
PENALTY AMOUNT: \$51,900

Can't Stop Moving LLC  
4253 22<sup>nd</sup> Avenue West  
Seattle, WA 98119

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees. The Commission also believes that you have committed violations of WAC 480-15-560 Equipment Safety Requirements and WAC 480-15-570 Driver Safety Requirements, which adopt Title 49 Code of Federal Regulations (CFR) Parts 391, 392, 395 and 396.

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.

In April 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review investigation of Can't Stop Moving LLC (Can't Stop Moving) and documented the following critical violations:

- **Five violations 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.** Can't Stop Moving had no documentation of having conducted criminal background checks on employees Prince Austin, Patrick Allen, Bobby Quinn, Tom Munson, and John Grueneberg.
- **Four hundred ninety-two violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** In the six months preceding the compliance review, Can't Stop Moving allowed five of its drivers, Bobby Quinn, Tom Munson, John Grueneberg, Prince Austin, and Patrick Allen to drive on 492 occasions during which time the drivers were not medically examined and certified. Between October, 2016 and March, 2017 Mr. Quinn drove 99 times; Mr. Munson drove 93 times; Mr. Grueneberg drove 82 times; Mr. Austin drove 116 times; and Mr. Allen drove 102 times.
- **Five violations of CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Can't Stop Moving had no driver qualification files for employees Prince Austin, Patrick Allen, Bobby Quinn, Tom Munson, or John Grueneberg.

- **Seventeen violations of CFR Part 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.** Prince Austin drove on 17 occasions during March 2017 during which time his driver's license was suspended.
- **Two violations of CFR 395.8(a) – Failing to require driver to make a record of duty status using appropriate method.** Can't Stop Moving failed to require its employee Tom Munson to make a record of duty status after having been on duty for 13 hours on March 11, and 14 hours on March 24, 2017.
- **Four violations of CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Can't Stop Moving failed to keep minimum records of inspection and vehicle maintenance on its four vehicles.
- **Four violations of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Can't Stop Moving failed to ensure its four commercial motor vehicles had been periodically inspected.

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 serious and potentially harmful to the public. Transportation providers put the traveling public at risk by using drivers with no documented criminal background checks and who are not medically examined and certified, not licensed, or otherwise unqualified, and by using vehicles not periodically inspected. A company using a driver with a criminal history, who is unqualified, or who has an undetected medical condition, or that is operating a vehicle with a defect 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.

Eric Michelson began operations in August 2009 as Can't Stop Moving. The company became Can't Stop Moving LLC in July 2011. Mr. Michelson attended household goods movers training in October 2011 and received new entrant technical assistance from Commission staff in October 2012.

Can't Stop Moving was penalized \$100 in July 2011 under docket TV-111307 for one violation of CFR 391.45(a), using a driver not medically examined and certified.<sup>1</sup> Also noted during the July 2011 compliance review were 30 occurrences of CFR 395.8(a),

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<sup>1</sup> Mr. Michelson drove without a valid medical certificate on 97 occasions, however the company was only penalized \$100 for one violation of this type.



failing to require to make record of duty status.<sup>2</sup> A compliance review investigation in August 2012 identified no violations, demonstrating that the company is capable of full compliance.

Since 2009, the Commission has suspended or cancelled Can't Stop Moving's certificate four times for lack of insurance, and assessed penalties and/or cancelled the company's certificate six times for failure to submit its annual report.

Staff believes that Can't Stop Moving knew, or should have known about these violations. Staff also believes that the company's history demonstrates indifference, if not contempt, for the Commission requirements and safety regulations.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Can't Stop Moving cooperated with the investigation and provided Staff with all requested documentation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company corrected many of the violations immediately.
6. **The number of violations.** For a small company like Can't Stop Moving, the number of critical violations noted is quite significant.
7. **The number of customers affected.** The company traveled 18,642 miles and reported \$1,345,183 in gross revenue for 2016. These safety violations likely affected a large number of customers as well as members of the traveling public.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, however, historically the company has shown little interest in complying with the Commission's rules and safety regulations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's second compliance review. Two violation types noted in the 2011 compliance review were noted again in the current review.
10. **The company's existing compliance program.** Can't Stop Moving has no formal compliance program.
11. **The size of the company.** Can't Stop Moving is a small company, with nine drivers and four commercial vehicles. In 2016 the company reported 18,642 miles traveled and \$1,345,183 in gross revenue.

Several of these are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will

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<sup>2</sup> Both of these violation types were repeated in the case at hand.

issue mandatory penalties for each occurrence of a first-time violation.<sup>3</sup> 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. 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 Can't Stop Moving \$51,400 for violations of WAC 480-15-100 Criminal Background Checks for Prospective Employees, as well as WAC 480-15-560 Equipment Safety Requirements and WAC 480-15-570 Driver Safety Requirements, both of which adopt Title 49 Code of Federal Regulations (CFR) Parts 391, 392, 395 and 396, calculated as follows:

- Five violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background checks for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$500.
- Four hundred ninety-two violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$49,200.
- One violation of CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for one critical violation of this type.
- Seventeen violations of CFR Part 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$1,700.
- Two violations of CFR 395.8(a) – Failing to require driver to make a record of duty status using appropriate method. As repeat violations, The Commission assesses a penalty of \$100 for each occurrence of this critical violation for a total of \$200.
- One violation of CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for one critical violation of this type.
- One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for one critical violation of this type.

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<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.



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 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 May 1, 2017.



GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TV-170293

**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.”