

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190008
PENALTY AMOUNT: \$200

David GM Anderson
Anderson Piano Company
2732 French Rd. NW
Olympia, WA 98502

State Of WASH.
UTIL. AND TRANSP.
COMMISSION
02/04/19 08:11
Received
Records Management

The Washington Utilities and Transportation Commission (Commission) believes that David GM Anderson, d/b/a Anderson Piano Company, (Anderson Piano Company 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 (CFR) Part 391 related to driver qualifications.

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 January 3, 2019, Commission Motor Carrier Investigator Sandi Yeomans completed a routine safety investigation of Anderson Piano Company and documented the following violations:

- **One violation of WAC 480-15-555 – Criminal background checks for prospective employees.** The Company failed to perform a criminal background check on its employee Mikel Anderson.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification on each driver employed.** The Company failed to maintain driver qualifications for its employees David Anderson and Mikel Anderson.

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 very serious and potentially harmful to the public. Household goods moving companies that fail to conduct criminal background checks on prospective employees and fail to maintain driver qualification files put their customers, as well as the traveling public, at risk.
2. **Whether the violations were 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 February 24, 2017, application for a household goods moving certificate, owner David Anderson acknowledged his responsibility to comply with applicable laws and regulations. Mr. Anderson attended household goods mover training on August 16, 2017. 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.** Anderson Piano Company was cooperative throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected violations throughout the investigation process.
6. **The number of violations.** Commission staff identified five violation types with a total of seven individual occurrences.
7. **The number of customers affected.** The Company reported 151 intrastate household goods moves completed and 6,992 miles traveled 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 Anderson Piano Company is likely to repeat these safety violations, however the Company was very cooperative with Staff, willingly accepted technical assistance, and took immediate steps to correct the violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. The Commission penalized the Company \$1,000 in 2018 for failing to file a timely annual report.
10. **The Company's existing compliance program.** Mr. Anderson, owner, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Anderson Piano Company is a small company, with one vehicle and two drivers. In 2017 the Company reported \$117,008 in gross revenue.

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

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

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 Anderson Piano Company \$200 for violations of WAC 480-15-555, criminal background checks for prospective employees, and WAC 480-15-570, Driver Safety Requirements, calculated as follows:

- One violation of WAC 480-15-555 – Criminal background checks for prospective employees. The Commission assesses a penalty of \$100 for the first occurrence for a total of \$100.
- Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. As a first-time violation, the Commission assesses a penalty of \$100 for one violations of this type, 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 either or both 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. Or, if there is a reason for either or both 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 violations 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 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 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 Olympia, Washington, and effective January 31, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190008

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 \$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: 2/1/19 [month/day/year], at Olympia, Wa. [city, state]

Anderson Piano Service
Name of Respondent (Company) – please print

David JM Anderson
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.”