

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220651
PENALTY AMOUNT: \$2,400

ASD Ventures, Inc.,
d/b/a College Hunks Hauling Junk & Moving
2114 6th St.
Bremerton, WA 98312

State Of WASH.
UTIL. AND TRANSP.
COMMISSION

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The Washington Utilities and Transportation Commission (Commission) believes ASD Ventures, Inc., d/b/a College Hunks Hauling Junk & Moving (ASD 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 C.F.R.) 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 24, 2022, Commission Motor Carrier Investigator Sandra Yeomans completed a follow-up safety investigation of ASD and documented the following violations:

- **Twenty-two violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** ASD failed to conduct criminal background checks for employees Ramos Fernando, Anthony Barber, Ashley Gay, Benjamin Rogers, Blaren Castro, Brendon Sheehy, Brian Delong, Corey Fernandez, Elijah McGee, Emherlyn Camacho, Gordon Demupan, Grashiere Jones, Joseph Lawson, Joshua Hunt, Larry Naputi, Logan Herndon, Maxwell Whittingham, Nicholas Kelly, Paula Beisley, Raymond Horton, Samuel Anderson, and Seth Thomason.
- **Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application.** The Company failed to complete employment applications for drivers Ramos Fernando, Gordon Demupan, Maxwell Whittingham, and Seth Thomason.
- **One violation of 49 C.F.R. § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to maintain inquiries into the driving record of Seth Thomason.

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) use drivers without first completing employment applications, and (3) fail to maintain inquiries into drivers' driving records, put their customers, their customers' belongings, and the traveling public at risk. These violations present significant 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 June 26, 2018, the Commission received the Company's application for household goods moving authority. In the application, William Beisley, President of ASD, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On November 7, 2018, William Beisley and Suzan Ruiz, Operations Manager of ASD, attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On August 13, 2020, Staff completed a routine safety investigation of ASD and documented violations of WAC 480-15-555.

On August 20, 2021, Staff completed a follow-up safety investigation of ASD and discovered violations of WAC 480-15-555, 49 C.F.R. § 391.21(a), and 49 C.F.R. § 391.51(b)(2).

On October 13, 2021, Paula Beisley, Vice President of ASD, and Nick Kelly, Office Assistant of ASD, 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.** ASD did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance with applicable motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 14 violation types with a total of 50 individual occurrences during the follow-up safety investigation of ASD. Of those

violations, Staff identified three violation types with a total of 27 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** ASD reported traveling 88,604 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite multiple safety investigations in the previous two years and having received extensive technical assistance from Staff. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On October 12, 2020, ASD was penalized \$5,050 in Order 01 of consolidated Dockets TV-200745 and TV-200746 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. The Commission suspended a \$3,000 portion of the penalty for a period of two years, subject to the conditions that ASD did not incur any repeat violations of critical regulations and the Company paid the non-suspended portion of the penalty. The Commission later imposed the suspended penalty due to ASD incurring repeat violations of critical regulations. ASD paid the \$5,050 penalty in full.

On October 18, 2021, the Company was penalized \$700 in Order 01 of consolidated Dockets TV-210654 and TV-210655 for safety violations of WAC 480-15-555 and WAC 480-15-570. The Company paid the \$700 penalty in full.
10. **The Company's existing compliance program.** Paula Beisley and Nick Kelly are responsible for the Company's safety compliance program.
11. **The size of the Company.** ASD operates five commercial motor vehicles and employs nine drivers. The Company reported \$1,433,947 in gross revenue for 2021.

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 by violation category, 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 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 ASD \$2,400, calculated as follows:

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

- Twenty-two violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for each occurrence of this repeat critical violation, for a total of \$2,200.
- Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- One violation of 49 C.F.R. § 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 this repeat violation.

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 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 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 Penalty Assessment. 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 September 9, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220651

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: 11-14-2022 [month/day/year], at Bremerton, WA [city, state]

ASD VENTURES INC
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 or she makes a materially false statement which he or she 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 or her 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.