

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(ENGEL & VÖLKERS AMERICAS,
INC.)

NO. 19-2-25518-8

ENGEL & VÖLKERS AMERICAS,
INC. ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1. In August 2019, the Attorney General initiated an investigation into Engel & Völkers Americas, Inc. (Engel & Völkers) relating to its hiring practices.

1.2. Engel & Völkers is a Delaware corporation with its principal office or place of business in New York, New York. Engel & Völkers is in the business of franchising third parties to operate real estate brokerages for the marketing of residential property under the Engel & Völkers® service mark and franchising third parties to sub-franchise the same franchise system and service mark both in the United States of America (the U.S.) and in other parts of the Americas. The franchisees with stores located in the U.S. are, with respect to those stores, referred to as “U.S. franchisees” and the franchise agreements with U.S. franchisees are referred to as “U.S. franchise agreements.”

1.3. For the purposes of this AOD, Engel & Völkers includes its directors, officers,

1 managers, agents acting within the scope of their agency, and employees as well as its successor
2 and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures,
3 in each case limited to persons, entities, divisions and groups, domiciled or having its principal
4 place of business in the U.S. The definition of Engel & Völkers also does not include any master
5 franchisee without operations or franchisees in the State of Washington.

6 II. INVESTIGATION

7 2.1. Engel & Völkers has three (3) stores in Washington. All of these stores are owned
8 and operated by franchisees.

9 2.2. For years, Engel & Völkers has included language in its U.S. franchise
10 agreements that restricted a franchisee's ability to solicit or hire employees from other Engel &
11 Völkers franchisees (no-poaching provision). This provision was limited to administrative
12 personnel and never included real estate brokers working for franchisees. Specifically, the
13 standard Engel & Völkers franchise agreement stated that "During the Term, Licensee agrees
14 not to solicit or hire employees either of Licensor or its affiliates, or of any other ENGEL &
15 VÖLKERS master licensee or licensee, by direct or indirect offers of employment, except in
16 cases where the current employer has issued its prior written consent." Engel & Völkers never
17 enforced the provision.

18 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,
19 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
20 RCW 19.86.030.

21 2.4. Engel & Völkers expressly denies the conduct described above constitutes a
22 contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection
23 Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that
24 constitutes a contract, combination, or conspiracy in restraint of trade. Engel & Völkers believes
25 that the no poaching provision was adopted to encourage franchisees to make the investments
26 necessary to develop well-trained, high-quality, and stable workforces in their locations, which

1 in turn strengthened Engel & Völkers' brand and individual Engel & Völkers locations' ability
2 to compete against other branded companies, among other reasons. Engel & Völkers enters into
3 this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this
4 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
5 wrongdoing on the part of Engel & Völkers.

6 III. ASSURANCE OF DISCONTINUANCE

7 3.1. Subject to paragraph 2.4 above, Engel & Völkers agrees:

8 3.1.1 It will not include no-poach provisions in any of its future U.S. franchise
9 agreements;

10 3.1.2 It will not enforce no-poaching provisions in any of its existing U.S.
11 franchise agreements, and it will not seek to intervene or defend in any way the legality of any
12 no-poach provision in any litigation in which a U.S. franchisee may claim third-party beneficiary
13 status rights to enforce an existing no-poach provision;

14 3.1.3 It will notify all of its U.S. franchisees of the entry of this agreement with
15 the State, and provide them a copy of the AOD upon request;

16 3.1.4 It will notify the Attorney General's Office if it learns of any effort by an
17 Engel & Völkers franchisee in Washington to enforce any existing no-poach provision.

18 3.2. Within 60 days of entry of this AOD, Engel & Völkers will exercise all reasonable
19 commercial efforts to amend all existing franchise agreements with its franchisees in the State
20 of Washington to remove any no-poaching provisions in its existing franchise agreements in the
21 State of Washington. Engel & Völkers is under no obligation to offer any franchisee any
22 monetary or non-monetary consideration to induce them to accept the proposed amendment of
23 the franchise, and it shall be under no obligation to take any coercive action against a franchisee
24 that may refuse or decline to agree to any amendment of its franchise agreement. If any Engel &
25 Völkers franchisee in the State of Washington is unwilling to consent to the change to its
26 franchise agreement, prior to the 60-day deadline, Engel & Völkers shall provide the name and

1 address of that franchisee and the name and address of the franchisee's registered agent to the
2 Office of the Attorney General.

3 3.3. As they come up for either renewal or renegotiation during the ordinary course
4 of business, Engel & Völkers will amend all of its existing U.S. franchise agreements on a
5 nationwide basis to remove any no-poach provision.

6 3.4. Within 30 days of the conclusion of the time periods referenced in this section
7 III, Engel & Völkers will submit a declaration to the Attorney General's Office signed under
8 penalty of perjury stating that all provisions of this agreement have been satisfied.

9 IV. ADDITIONAL PROVISIONS

10 4.1. This AOD is binding on, and applies to Engel & Völkers, including each of its
11 respective directors, officers, managers, agents acting within the scope of their agency, and
12 employees, as well as their respective successors and assigns, controlled subsidiaries, divisions,
13 groups, affiliates, partnerships, and joint ventures, or other entities through which Engel &
14 Völkers may now or hereafter act with respect to the conduct alleged in this AOD, in each case
15 limited to persons, entities, divisions and groups domiciled or having its principal place of
16 business in the U.S. and not including any master franchisee without operations or franchisees
17 in the State of Washington.

18 4.2. This is a voluntary agreement and it shall not be construed as an admission of
19 law, fact, liability, misconduct, or wrongdoing on the part of Engel & Völkers. By entering into
20 this AOD, Engel & Völkers neither agrees nor concedes that the claims, allegations and/or causes
21 of action which have or could have been asserted by the Attorney General have merit and Engel
22 & Völkers expressly denies any such claims, allegations, and/or causes of action. However, proof
23 of failure to materially comply with this AOD shall be *prima facie* evidence of a violation of
24 RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition
25 by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate
26 civil penalties under the Consumer Protection Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4.3. Engel & Völkers will not, nor will it authorize any of its officers, employees, representatives, or agents to state or otherwise contend that the State of Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to the No-Poach Provision in Engel & Völkers' franchise agreement.

4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act and any other related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this ____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:

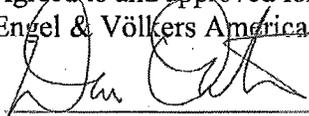
2 ROBERT W. FERGUSON
3 Attorney General

4 *For: Jonathan Mark #35031*

5 RAHUL RAO, WSBA #53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 (206) 442-4499
12 rahul.rao@atg.wa.gov

13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 Engel & Völkers Americas, Inc.

16 
17 DANIEL J. OATES, WSBA #39334
18 Miller Nash Graham & Dunn LLP
19 2801 Alaskan Way, Suite 300
20 Seattle, WA 98121
21 (206) 777-7537
22 Dan.Oates@millernash.com

23 and

24 BEATA KRAKUS
25 Greensfeider, Hemker & Gale, P.C.
26 200 West Madison Street, Suite 3300
Chicago, IL 60606
(312) 375-3877
bkrakus@greensfelder.com

Attorneys for Engel & Völkers Americas, Inc.


Engel & Völkers Americas Inc. Rep

By: Anthony H.H.

Its: President & CEO