

PETER C. ANDERSON
CIRCUIT COURT, BR. 17

COPY

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

MATTHEW HOEFING
1 N. Strathfield Circle
Madison, WI 53717,

FILED

APR 21 2016

DANE COUNTY CIRCUIT COURT

Plaintiff,

vs.

Case No. 16CV1073
Case Type: 30701 (Declaratory Judgment)

RALLY APPRAISAL, LLC
1454 30th Street, #107
West Des Moines, IA 50266,

Defendant.

SUMMONS

THE STATE OF WISCONSIN, To each person and entity named above as a Defendant.

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703, and to Plaintiff's attorneys, Hawks Quindel, S.C., 222 West Washington Avenue, Suite 450, Madison, Wisconsin 53703. You may have an attorney help or represent you.

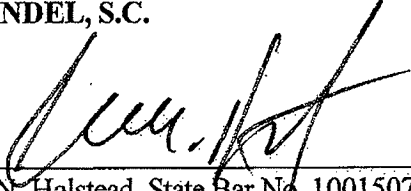


If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 21st day of April, 2016.

HAWKS QUINDEL, S.C.

By: _____


Aaron N. Halstead, State Bar No. 1001507
222 West Washington Avenue, Suite 450
Madison, Wisconsin 53701-2155
Email: ahalstead@hq-law.com
Telephone: 608/257-0040

Attorneys for Plaintiff, Matthew Hoefing

COPY

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

MATTHEW HOEFING
1 N. Strathfield Circle
Madison, WI 53717,

FILED

APR 21 2016

DANE COUNTY CIRCUIT COURT

Plaintiff,

vs.

Case No. 16CV1073
Case Type: 30701 (Declaratory Judgment)

RALLY APPRAISAL, LLC
1454 30th St., #107
West Des Moines, IA 50266,

Defendant.

COMPLAINT

The Plaintiff, Matthew Hoefing, by his attorneys, Hawks Quindel, S.C. and Aaron N. Halstead, for his Complaint against the Defendant, Rally Appraisal LLC, states as follows:

PARTIES

1. Plaintiff Matthew Hoefing ("Hoefing") is an adult resident of the State of Wisconsin, whose address is 1 N. Strathfield Circle, Madison, Wisconsin 53717.
2. Defendant, Rally Appraisal, LLC ("Rally"), is a foreign limited liability company duly organized under the laws of the State of Iowa, doing business in the state of Wisconsin. Rally's headquarters are located at 1454 30th St., #107, West Des Moines, Iowa, 50266. Rally's principal place of business in Wisconsin is located at 6441 Enterprise Lane, Suite 201, Madison, Wisconsin, 53719. Rally's registered agent for service in Wisconsin, according to the most

recent information it has on file with the Wisconsin Department of Financial Institutions, is Plaintiff.

FACTS

3. Defendant Rally is engaged in the business of providing real estate appraisal and valuation services throughout the Midwest, including in Iowa, Illinois, Missouri, and Wisconsin.

4. Plaintiff Hoefing is a licensed Certified General Appraiser.

5. On November 23, 2005, Hoefing signed an Employment Agreement with a business entity known as Hayes Appraisal Associates LC (“Hayes”). A true and correct copy of the Employment Agreement is attached hereto as **Exhibit 1**.

6. In the Employment Agreement, Hayes purported to place certain limitations on Hoefing’s work activities should he separate from employment with Hayes. Specifically, Article II of the Employment Agreement states as follows:

A. In the event that the appraiser leaves the employ of Hayes, the appraiser... agrees not to compete in any then current Hayes established service market.

Competing with Hayes would involve continuing in the appraisal field by owning or being employed by another business entity which conducts, manages, performs or is otherwise associated with appraising and/or by individually performing appraisal services for a fee.

The “then current Hayes established service market” is defined by the geographical area to include all residential and commercial appraisal activities and services included therein within a 50 mile radius of any then current listed Hayes office address.

B. As an exception to A above, in the event that Appraiser wishes to discontinue employment with Hayes, while also wishing to continue in the appraisal field, the appraiser will provide Hayes a minimum of thirty (30) days prior notice of termination by formal letter of resignation, with such notice period to begin on the day the letter of resignation is received by Hayes. The Appraisers [sic] would be allowed to directly compete with Hayes if the appraiser so compensates Hayes pursuant to the following calculation process. Appraiser agrees that Appraiser will reimburse Hayes for training and good will by multiplying the total of the appraisers’ gross appraisal billings for the prior

12 full month periods by 1.5. In the event that Hayes in its discretion would be required to close the individual market location the multiplication factor used above will become 2.0. Such amount is due upon the last day of employment. It is further agreed by both parties that the amount is in full satisfaction of any and all claims by either party. In the event Appraiser fails to make this one time payment as required under this section the application of this section is null and void.

C. If Appraiser wishes to discontinue employment, but does not wish to compete with Hayes until after a two year waiting period, then the Appraiser agrees not to continue in the field of appraising in any then current Hayes established service market, for a period of two (2) years from the effective date of termination.

7. Hoefing first performed work for Hayes in January 2006.

8. In or about May or June 2006, Hayes ceased to do business. On information and belief, Hayes at that time was acquired by, merged with, or changed its name to Rally Appraisal LLC. At that same time, some or all of Hayes' employees, including Hoefing, became employees of Rally.

9. Hoefing has never signed any employment agreement with Rally.

10. In or about January 2008, Rally reassigned Hoefing from its Rockford, Illinois office to its Madison, Wisconsin office.

11. From January 2008 to present, Hoefing has continuously resided in the state of Wisconsin.

12. From January 2008 until April 21, 2016, Hoefing was engaged in full-time appraisal work for Rally in Wisconsin.

13. Over the last five years, the great majority of Hoefing's appraisals have been performed on real property in Dane County, with 95%+ of same being performed in south-central Wisconsin.

14. Hoefing has never performed any appraisal work in Missouri.

15. Hoefing has not performed appraisal work in Illinois since early 2008.

16. Hoefing has only sporadically performed appraisal work in Iowa, where he last performed an appraisal in 2011.

17. Rally operated offices, as of Hoefing's last day of employment, in geographic areas beyond those that existed when Hoefing signed the Employment Agreement.

18. Hoefing separated from employment with Rally on April 21, 2016, and intends to continue working as a Certified General Appraiser in and around Dane County, Wisconsin.

19. Hoefing desires to have the Court declare his and Rally's respective rights and obligations under the Employment Agreement.

CAUSE OF ACTION: DECLARATORY JUDGMENT

20. Paragraphs 1-19, *supra*, are reasserted as though set forth here in full.

21. Under Wis. Stat. § 806.04, and particularly Wis. Stat. § 806.04(2), this Court has the power to declare the rights of the parties to the agreement.

22. The Employment Agreement is illegal, void and unenforceable as applied to the above-asserted facts in that it purports to restrict Hoefing's activities in a manner broader than necessary to protect Rally's legitimate business interests, in violation of Wis. Stat. § 103.465.

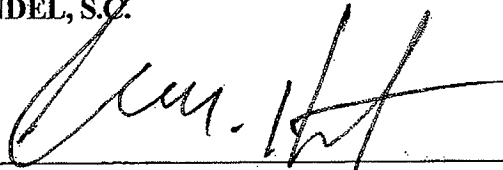
WHEREFORE, Hoefing hereby demands judgment against Rally as follows:

- A. Declaring that Article II of the Employment Agreement is illegal, void, and unenforceable;
- B. Awarding Hoefing reasonable attorney's fees and costs; and
- C. Granting Hoefing such other and further relief as this Court deems appropriate.

Dated this 21st day of April, 2016.

HAWKS QUINDEL, S.C.

By: _____



Aaron N. Halstead, State Bar No. 1001507
222 West Washington Avenue, Suite 450
Madison, Wisconsin 53701-2155
Email: ahalstead@hq-law.com
Telephone: 608/257-0040

Attorneys for Plaintiff, Matthew Hoefing

EXHIBIT 1

EMPLOYMENT AGREEMENT

This Agreement is entered into by and between HAYES APPRAISAL ASSOCIATES, L.C. (hereinafter referred to as "Hayes"), and Matthew D. Hoefing (hereinafter referred to as "Appraiser").

WHEREAS, Appraiser wishes to be employed by Hayes and to undergo on-the-job training from Hayes leading to qualification and work with Hayes as a professional real estate appraiser;

WHEREAS, Appraiser wishes to remain with and advance within Hayes;

WHEREAS, Appraiser recognizes that with each credential gained and years of experience encountered, that Hayes will have invested a substantial amount of investment in time and dollars;

WHEREAS, Appraiser further recognizes the exposure to the Hayes method of operation including forms, manuals, and methods of operations,

WHEREAS, Appraiser further recognizes the exposure to the client base,

WHEREAS, Hayes wishes to employ Appraiser on the terms and conditions described in this Agreement.

In consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as follows:

ARTICLE I

EMPLOYMENT AS A PROFESSIONAL APPRAISER

As evidenced by the below affixed signatures Hayes and the Appraiser have come to agreement and Hayes agrees to employ Appraiser .

ARTICLE II

A. In the event that the appraiser leaves the employ of Hayes, the appraiser in recognizing the value of the business model, the value in the operating procedures and policies, and accessing the client listing and other valued documents within Hayes agrees not to compete in any then current Hayes established service market.

Competing with Hayes would involve continuing in the appraisal field by owning or being employed by another business entity which conducts, manages, performs or is otherwise associated with appraising and/or by individually performing appraisal services for a fee.

The "then current Hayes established service market" is defined by the geographical area to include all residential and commercial appraisal activities and services included therein within a 50 mile radius of any then current listed Hayes office address.

B. As an exception to A above, in the event that Appraiser wishes to discontinue employment with Hayes, while also wishing to continue in the appraisal field, the appraiser will provide Hayes a minimum of thirty (30) days prior notice of termination by formal letter of resignation, with such notice period to begin on the day the letter of resignation is received by Hayes. The Appraisers would be allowed to directly compete with Hayes if the appraiser so compensates Hayes pursuant to the following calculation process. Appraiser agrees that Appraiser will reimburse Hayes for training and good will by multiplying the total of the appraisers' gross appraisal billings

for the prior 12 full month periods by 1.5. In the event that Hayes in its discretion would be required to close the individual market location the multiplication factor used above will become 2.0. Such amount is due upon the last day of employment. It is further agreed by both parties that the amount is in full satisfaction of any and all claims by either party. In the event Appraiser fails to make this one time payment as required under this section the application of this section is null and void.

C If Appraiser wishes to discontinue employment, but does not wish to compete with Hayes until after a two year waiting period, then the Appraiser agrees not to continue in the field of appraising in any then current Hayes established service market, for a period of two (2) years from the effective date of termination.

D Appraiser further agrees under all conditions to turn over to Hayes on or before the effective date of termination all property of Hayes in Appraiser's possession, including all office assets and equipment, as well as all office copies of appraisal reports, written and/or electronic.

ARTICLE III

A. This Agreement contains all of the arrangements made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their successors and/or assigns. No prior understanding or representation of any kind made before execution of this Agreement shall be binding upon either party unless incorporated herein. To the extent that any provision is not enforceable by action of law, any limited provision and all other provisions in this agreement remain in force

