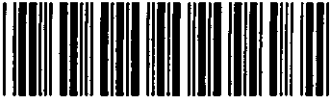


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3:04-CV-02295 SEC V. EMVEST MORTGAGE FUND

\*1\*

\*CMP.\*

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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

1 MOLLY M. WHITE, Cal. Bar No. 171448  
2 KELLY BOWERS, Cal. Bar No. 164007  
3 VICTORIA A. LEVIN, Cal. Bar No. 166616  
4 SUSAN F. HANNAN, Cal. Bar No. 97604

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6 Securities and Exchange Commission  
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14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA

16 SECURITIES AND EXCHANGE  
17 COMMISSION,

18 Plaintiff,

19 vs.

20 EMVEST MORTGAGE FUND, LLC,  
21 EMVEST, INC., and MILON LYLE  
22 BROCK,

23 Defendants.

Case No. '04 CV 2295 DMS (LSP)

COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS

24 Plaintiff Securities and Exchange Commission ("Commission") alleges as  
25 follows:

26 **JURISDICTION AND VENUE**

27 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
28 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§  
77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of  
the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),  
78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly made use of

CR

1 the means or instrumentalities of interstate commerce, of the mails, or of the  
2 facilities of a national securities exchange, in connection with the transactions,  
3 acts, practices and courses of business alleged in this complaint.

4 2. Venue is proper in this district pursuant to Section 22(a) of the  
5 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
6 § 78aa, because the defendants reside and conduct business in the district and  
7 because certain of the transactions, acts, practices, and courses of conduct  
8 constituting violations of the federal securities laws occurred within this district.

9 **SUMMARY**

10 3. This case involves an ongoing Ponzi scheme concerning the  
11 fraudulent offer and sale of approximately \$18 million of securities in Emvest  
12 Mortgage Fund, LLC (the "Fund") by the Fund, its manager, Emvest, Inc.  
13 ("Emvest"), and by Emvest's Chief Executive Officer, Milon Lyle Brock  
14 ("Brock"). In 2003 and 2004, defendants misrepresented and failed to disclose to  
15 potential and existing Fund investors material information regarding a) the use of  
16 investor capital; b) investor returns; and c) the preservation of investor capital.

17 4. The defendants represented that the investors' capital would be used  
18 to make and purchase loans secured by real property, without disclosing, among  
19 other things, that the defendants used substantial amounts of new investors' capital  
20 to pay returns to existing investors and to cover the Fund's operating losses.  
21 Moreover, despite an explicit prohibition in the offering prospectus, the defendants  
22 used investor capital to pay finder's fees or commissions to a company affiliated  
23 with the Fund.

24 5. The defendants misrepresented investor returns by representing that  
25 the Fund would pay investors a 12% return on their capital, while failing to  
26 disclose that all or a substantial portion of their 12% return was funded with new  
27 investor capital.

28 ///



1 10. Emvest, Inc. is a California corporation formed in or about October  
2 2001, with offices in San Diego, California. Emvest is the manager of the Fund.  
3 As the manager of the Fund, Emvest controls the selection of loans and all  
4 decisions regarding the Fund's equity and debt capitalization. As the Fund's  
5 manager, Emvest receives an annual management fee equal to 0.5% of the book  
6 value of the Fund's loan portfolio and 50% of the Fund's income, if any, after  
7 investors are paid their 12% return.

8 11. Brock controls Emvest and the Fund, as well as other related entities.  
9 For example, Brock is the founder and CEO of EB Financial, an affiliate through  
10 which the Fund sells some of its loans to individual trust deed investors. Brock  
11 also controls Unified Mortgage Services ("Unified"), where Brock's daughter  
12 serves as president. Unified services the Fund's loans by collecting the monthly  
13 payments from the borrowers and, after deducting servicing fees, sending the  
14 payments to the Fund or to the individual who purchased the loan. Brock also  
15 controls Emerald Bay Funding, Inc. ("EB Funding"), an entity through which the  
16 Fund makes loans, even though Brock's son-in-law serves as its president. EB  
17 Funding is a California-based licensed finance lender that makes loans to  
18 individuals who do not qualify for loans from other financial institutions.

### 19 **THE FRAUDULENT SCHEME**

#### 20 **A. The Fraudulent Offering**

21 12. In March 2002, the Fund began conducting a \$50 million securities  
22 offering consisting of 50,000 shares at \$1,000 per share. From March 2002  
23 through August 2004, the Fund raised approximately \$18 million from 270  
24 investors. From January through August 2004, the Fund raised \$7.24 million in  
25 new investments before the Fund was closed to new investments in August 2004.

26 13. The Fund's offering prospectus stated that, after deducting 4% for  
27 sales commissions and offering costs, Emvest would principally use the offering  
28 proceeds to make or acquire loans secured by real property in California. The

1 prospectus further represented that the Fund would pay investors “a 12% per  
2 annum priority return on their unreturned original invested capital” on a monthly  
3 basis. Brock participated in drafting, reviewing, and approving the Fund’s  
4 prospectus.

5 14. The Fund solicited investors through cold calls, newspaper and radio  
6 ads, newsletters, and the Emvest website found at “megayield.com.” The Fund’s  
7 newspaper ads emphasized that the Fund would pay 12%. Some of the Fund’s  
8 newsletters, which were sent to both existing and potential investors, stated that  
9 current investors were earning 12.5% “with no loss of principal.” Brock reviewed  
10 the newspaper ads and newsletters before they were published. Emvest’s website  
11 touted “a double-digit return” of 12% on the principal investment. The website  
12 also stated that the Fund’s objective was to “[p]reserve and return [investor’s]  
13 capital contributions” and that the investment was suitable for IRAs and pension  
14 plans seeking capital preservation.

15 **B. The Fund’s Use of Investor Capital and Operating Results**

16 15. The Fund used investments from new investors to pay returns to  
17 earlier investors during 2003 and 2004.

18 16. In 2003, the Fund used \$323,766 of new investor capital to pay  
19 distributions to other investors. In 2003, the Fund had an operating profit of only  
20 \$584,696, but distributed \$908,462 to existing investors. Thus, the distribution  
21 was paid in part with new investor capital.

22 17. From January through August 2004, the Fund had an operating loss of  
23 about \$112,000. During the same period, the Fund paid investors approximately  
24 \$1.174 million in distributions, using approximately \$1.286 million of new  
25 investor capital to pay the distributions and to cover operating losses.

26 18. The Fund’s distributions have reduced the existing investors’ capital  
27 accounts, because the Fund has used that capital to pay returns. The defendants  
28 have not properly valued the investors’ capital accounts to reflect their reduced

1 value caused by the use of investor capital to pay returns. The Fund does not have  
2 current financial statements showing the true value of each investor's capital  
3 account. The defendants have not prepared financial statements showing the  
4 current value of each investor's capital account since late 2003. As a result, during  
5 2004, defendants have allowed some investors to make withdrawals that exceed  
6 the actual amount of their remaining capital.

7 **C. Defendants' Misrepresentations and Omissions**

8 19. The defendants made false representations regarding their use of  
9 investor capital. The defendants falsely represented that after deducting 4% from  
10 investors' funds for sales commissions, they would use the gross proceeds  
11 principally for funding or acquiring loans. Instead, the defendants used a  
12 substantial amount of new investor capital to pay returns to existing investors in  
13 2003 and 2004, and to cover operating losses in 2004. Indeed, in 2004, the  
14 defendants have used almost 18% of the Fund's new investments to pay  
15 distributions to existing investors and cover the Fund's operating loss.

16 20. The Fund has also made misrepresentations regarding the use of  
17 investor capital to pay finder's fees or commissions to EB Financial. The Fund  
18 prospectus states that "affiliates of [Emvest], may receive loan origination,  
19 broker's, finder's, and/or other fees from third parties (but not the [Fund]) in  
20 connection with the acquisition and/or disposition of assets comprising the  
21 [Fund's] loan portfolio." Despite this representation, in May and June of 2004, the  
22 Fund paid approximately \$243,719 in finder's fees or commissions to EB  
23 Financial, an affiliate of Emvest.

24 21. The defendants falsely represented that investors would receive a 12%  
25 return on their capital. These representations were false and misleading in that  
26 they omitted to disclose that all or a substantial portion of the return was funded  
27 with new investor capital. In 2003, approximately 35% of investor returns were  
28 paid with new investor capital and in 2004, all investor returns were paid with new

1 investor capital.

2 22. The defendants falsely represented that the Fund's objective was to  
3 preserve capital contributions. At the time such representations were made, the  
4 defendants were reducing the investors' capital accounts by distributing more than  
5 the Fund earned in 2003 and 2004.

6 **D. Defendants Acted with Scienter**

7 23. Brock, and through him the Fund and Emvest, have acted with  
8 scienter. Brock knew, or was reckless in not knowing, that the Fund was  
9 distributing to investors more than the Fund was actually earning, that the Fund's  
10 distributions to investors included a return of principal, and that the investors'  
11 capital accounts were being depleted by distributions that exceeded earnings.  
12 Brock supervised the Fund's monthly operations, signed most of the Fund's  
13 checks, and reviewed the Fund's monthly collections or revenues.

14 24. In or about August 2003, the Fund's accountants told Brock that the  
15 Fund's 12.5% distributions exceeded the Fund's actual earnings. As a result,  
16 investors' capital accounts were being reduced. The accountants told Brock that  
17 withdrawing investors had incorrectly been paid more than the amount of their  
18 capital account, and advised him that investors should only be paid the amount of  
19 their capital accounts upon leaving the Fund.

20 25. In early 2004, seeing that nothing had changed, the accountants again  
21 warned Brock that investors should not be paid more than the amount in their  
22 capital accounts upon withdrawal from the Fund. Ignoring the accountants, Brock  
23 continued to pay distributions in excess of earnings, and failed to keep accurate  
24 and current records of investors' capital accounts.

25 26. In 2004, the accountants resigned. Since then, defendants have been  
26 unable or unwilling to find another accounting firm that would examine the Fund's  
27 books and records and prepare the Fund's financial reports. Because of the failure  
28 to have an accounting firm and to maintain accurate financial records, some

1 investors have been overpaid, to the detriment of other investors, when they  
2 withdrew from the Fund in 2004.

3 27. Brock also knew that the Fund paid prohibited finder's fees or  
4 commissions to EB Financial because he directed the Fund's bookkeeper to write  
5 the checks to EB Financial.

6 28. Despite this knowledge, Brock continued to offer and sell the Fund's  
7 securities through prospectuses, newspaper ads, and newsletters that  
8 misrepresented and failed to disclose material information about the Fund's use of  
9 investor capital, the Fund's returns, and the preservation of capital.

10 **E. ASSET DISSIPATION AND ONGOING FRAUD**

11 29. There is a reasonable likelihood that the defendants' fraudulent  
12 conduct will continue if not enjoined.

13 30. If defendants are not immediately stopped, there is a serious risk that  
14 they will continue to dissipate assets in the Fund. Defendants have been using and  
15 probably will continue to use new investors' capital to pay returns. Defendants  
16 have misled and probably will continue to mislead investors regarding the source  
17 of their returns. Defendants have been using and will probably continue to use  
18 investor capital to pay operating expenses. Defendants have failed and will  
19 probably continue to fail to keep accurate books and records reflecting the true  
20 state of affairs.

21 **FIRST CLAIM FOR RELIEF**

22 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

23 **Violations of Section 17(a) of the Securities Act**

24 31. The Commission realleges and incorporates by reference paragraphs 1  
25 through 30 above.

26 32. Defendants the Fund, Emvest, and Brock, and each of them, by  
27 engaging in the conduct described above, directly or indirectly, in the offer or sale  
28 of securities by the use or means or instruments of transportation or

1 communication in interstate commerce or by use of the mails:

- 2 a. with scienter, employed devices, schemes, or artifices to
- 3 defraud;
- 4 b. obtained money or property by means of untrue statements of a
- 5 material fact or by omitting to state a material fact necessary in
- 6 order to make the statements made, in light of the circumstances
- 7 under which they were made, not misleading; or
- 8 c. engaged in transactions, practices, or courses of business which
- 9 operated or would operate as a fraud or deceit upon the
- 10 purchaser.

11 33. By engaging in the conduct described above, each of the defendants  
12 violated, and unless restrained and enjoined will continue to violate, Section 17(a)  
13 of the Securities Act, 15 U.S.C. § 77q(a).

14 **SECOND CLAIM FOR RELIEF**

15 **FRAUD IN CONNECTION WITH THE**  
16 **PURCHASE OR SALE OF SECURITIES**

17 **Violations of Section 10(b) of the Exchange Act**  
18 **and Rule 10b-5 thereunder**

19 34. The Commission realleges and incorporates by reference paragraphs 1  
20 through 30 above.

21 35. Defendants the Fund, Emvest, and Brock, and each of them, by  
22 engaging in the conduct described above, directly or indirectly, in connection with  
23 the purchase or sale of a security, by the use of means or instrumentalities of  
24 interstate commerce, of the mails, or of the facilities of a national securities  
25 exchange, with scienter:

- 26 a. employed devices, schemes, or artifices to defraud;
- 27 b. made untrue statements of a material fact or omitted to state a
- 28 material fact necessary in order to make the statements made, in

1 the light of the circumstances under which they were made, not  
2 misleading; or

3 c. engaged in acts, practices, or courses of business which operated  
4 or would operate as a fraud or deceit upon other persons.

5 36. By engaging in the conduct described above, each of the defendants  
6 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
7 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
8 240.10b-5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission requests that the Court:

11 **I.**

12 Issue findings of fact and conclusions of law that the defendants committed  
13 the alleged violations.

14 **II.**

15 Issue orders, in a form consistent with Rule 65(d) of the Federal Rules of  
16 Civil Procedure, temporarily, preliminarily, and permanently enjoining each  
17 defendant and their officers, agents, servants, employees, and attorneys, and those  
18 persons in active concert or participation with any of them, who receive actual  
19 notice of the order by personal service or otherwise, and each of them, from  
20 violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act  
21 and Rule 10b-5 thereunder.

22 **III.**

23 Issue in a form consistent with Rule 65 of the Federal Rules of Civil  
24 Procedure, a temporary restraining order and a preliminary injunction freezing the  
25 assets of the Fund and Emvest and prohibiting each of the defendants from  
26 destroying documents; ordering accountings from each of the defendants,  
27 expediting discovery and appointing a receiver over defendants the Fund and  
28 Emvest.

1 **IV.**

2 Order each defendant to disgorge all ill-gotten gains from their illegal  
3 conduct, together with prejudgment interest thereon.

4 **V.**

5 Order Brock and Emvest, Inc. to pay civil penalties under Section 20(d) of  
6 the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act,  
7 15 U.S.C. § 78u(d)(3).

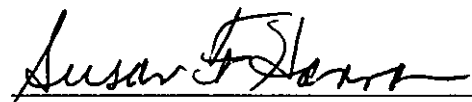
8 **VI.**

9 Retain jurisdiction of this action in accordance with the principles of equity  
10 and the Federal Rules of Civil Procedure in order to implement and carry out the  
11 terms of all orders and decrees that may be entered, or to entertain any suitable  
12 application or motion for additional relief within the jurisdiction of this Court.

13 **VII.**

14 Grant such other and further relief as this Court may determine to be just and  
15 necessary.

16  
17 DATED: November 15, 2004

18   
19 \_\_\_\_\_  
20 Susan F. Hannan  
21 Attorney for Plaintiff  
22 Securities and Exchange Commission  
23  
24  
25  
26  
27  
28

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

04 NOV 16 AM 9:07 '04 CV 2295 DMS(LSP)

CLERK, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

EMVEST MORTGAGE FUND, LLC, EMVEST, and MILON LYLE BROCK

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SAN DIEGO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Molly M. White 323-965-3998 Securities & Exchange Commission 5670 Wilshire Blvd., 11th Floor Los Angeles, CA 90036

ATTORNEYS (IF KNOWN)

Steven Gourley 310-540-5100 Malek & Malek 3625 Del Amo Blvd., Suite 350 Torrance, CA 90503

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). The Complaint alleges violations of the federal securities laws. 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 thereunder.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 411 Voting, 610 Agriculture, 710 Fair Labor Standards Act, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23 DEMAND \$ JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Doc# Number DATE 11-15-04 SIGNATURE OF ATTORNEY OF RECORD [Signature]

CR