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

\*149\*

\*DECL.\*

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SEP 21 2005

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**FILED**  
SEP 22 2005  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

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14  
15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **SECURITIES AND EXCHANGE**  
18 **COMMISSION,**

19 Plaintiff,

20 vs.

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

23 Defendants.

24 Case No. 04 CV 2295 DMS (POR)

25 **SUPPLEMENTAL DECLARATION OF**  
26 **SUSAN F. HANNAN IN SUPPORT OF**  
27 **SECURITIES AND EXCHANGE**  
28 **COMMISSION'S REPLY TO**  
**DEFENDANTS' AND UNIFIED**  
**MORTGAGE SERVICE, INC.'S**  
**RESPONSES TO THIRD VERIFIED**  
**REPORT OF RECEIVER**

Date: September 30, 2005

Time: 10:30 a.m.

Courtroom: 10 (Hon. Dana M. Sabraw)

149

**DECLARATION OF SUSAN F. HANNAN**

I, Susan F. Hannan, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice law by the State Bar of California and by this Court. I am an attorney with Plaintiff Securities and Exchange Commission (“Commission”) in the Office of Enforcement. I make this declaration in support of the Commission’s Reply to Defendants’ and Unified Mortgage Service, Inc.’s Responses to Third Verified Report of Receiver. I have personal knowledge of each of the matters set forth below, and, if called as a witness, I could and would competently testify to the facts stated herein.

2. To assist the court, the Commission respectfully submits this declaration with exhibits and excerpts from depositions and testimony that are relevant to Defendants’ Reply to Securities and Exchange Commission’s Response to Third Verified Report of Receiver. The Commission believes that the Defendants have mischaracterized the deposition testimony of Emvest Mortgage Fund’s outside accountants.

3. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition of Gary Kornfeld.

4. Attached as Exhibit 2 is a true and correct copy of excerpts from the deposition of Harlan Levy.

5. Attached as Exhibit 3 is a true and correct copy of excerpts from the deposition of Bruce Decker.

6. Attached as Exhibit 4 is a true and correct copy of excerpts from the testimony of Milon Brock.

7. Attached as Exhibit 5 is a true and correct copy of excerpts from the testimony of Timothy Canty.

8. Mr. Kornfeld and his partner, Mr. Levy, are accountants who compiled annual and interim balance sheets and related statements of income, member equity and cash flows for Emvest Mortgage Fund, LLC. (“Fund”) for certain time periods in 2002 and 2003. (See Levy Depo. at 21:22-22:13, and Exhibit 6 which is a true and correct copy of the Levy Depo Exhibit 182) They also assisted the Fund’s bookkeeper in providing information necessary to prepare a

1 working trial balance from which financial statements were compiled and prepared the federal  
2 and state partnership income tax returns for the year ended December 31, 2002 and 2003. (*Id.*)  
3 They did not audit the Fund, or do any forensic accounting such as tracing what funds were used  
4 to cover excess distributions. (*See Kornfeld Depo. at 179:2-16*) They did not compile any  
5 financial statements for 2004. (*See Kornfeld at 92:20-23 and 137:18-21.*)

6 9. Kornfeld and Levy produced a memorandum dated August 16, 2003 which was  
7 marked as Exhibit 197. (*See Levy Depo. at 139:5-24.*) A true and correct copy of Exhibit 197 is  
8 attached hereto as Exhibit 7. This document is addressed to Lyle Brock and memorializes  
9 information which Kornfeld and Levy told Mr. Brock verbally and in writing. It states in  
10 pertinent part among other things that:

11 "It appears that when an investor leaves the Fund, you distribute their original  
12 investment in full. Our determination is that this is an overstatement of what  
13 is due the partner. Therefore, the investors which have left the fund will have  
14 received distributions in excess of their actual capital accounts."

15 "...Since inception you have been paying a 12.5% distribution based on their  
16 original capital contributed. However, this has been in excess of the actual  
17 earnings of the fund...."

18 5. Mr. Kornfeld testified that he wrote the memo to Lyle Brock on August 16, 2003  
19 (*See Kornfeld Depo. at 97:18-24.*) He further testified that he wanted Mr. Brock to know about  
20 "This issue of paying investors in full based on their original capital contributed without taking  
21 into consideration the activity of the fund between the time they originally invested and the time  
22 that they withdrew." (*See Kornfeld Depo. at 99:2-6*) He testified that the reason he raised this  
23 with Mr. Brock was "Because I thought that they may be overpaying withdrawing members – or  
24 investors." (*See Kornfeld Depo. at 99:16-19.*)

25 6. He also discussed the memo with Mr. Brock because he thought it was an  
26 important issue. (*See Kornfeld Depo. at 102:14-16.*) He spoke to Mr. Brock first within a week  
27 of the memo and again in preparing the December 31, 2003 financial statements. (*See Kornfeld*  
28 *Depo. at 105:3-23.*) He raised the issue again because Mr. Brock had not corrected the problem.  
(*See Kornfeld Depo. at 105:15-23.*) Some withdrawals were reduced for some syndication costs,  
but Mr. Brock had not taken into account any of the other activity of the Fund. (*Id.*)

7. Mr. Kornfeld testified that he was concerned that people who were withdrawing

1 from the Fund were receiving more than their capital balance. (See Kornfeld Depo. at 108:5-9.)  
2 He was also concerned that the true capital balance was less than the original capital balance.  
3 (See Kornfeld Depo. at 108:10-12.) He was concerned that withdrawing investors were  
4 receiving more than what their capital accounts would be if they allocated all of the Fund's  
5 activities to each investor. (See Kornfeld Depo. at 108:15-24.) He felt that the withdrawing  
6 investors were being overpaid. (See Kornfeld Depo. at 109:3-9.) In addition, investors that  
7 withdrew received in excess of their capital account and therefore were allocated extra income.  
8 (See Kornfeld Depo. at 145:12-18.) As explained by Mr. Kornfeld:

9                    "...investors were receiving their original invested capital without  
10                    any reduction – without any reduction up or down for items that affect an  
11                    investor's capital, such as allocated syndication costs, earnings, prior  
                         distributions..." (See Kornfeld Depo. at 151:2-6)

12 6. Mr. Kornfeld testified that as a result of the overpayments, the remaining investors' value  
13 of their investment, as reflected in their capital accounts, was negatively impacted by the  
14 overpayments to the withdrawing investors for 2003. (See Kornfeld Depo. at 158:23-159:4-9).  
15 As Mr. Kornfeld explained:

16                    ....If you received a withdrawing distribution in excess of what  
17                    you may have been entitled to, then indirectly it resulted in a reduction of  
18                    earnings – or a reduction of something to the remaining partners who  
19                    didn't withdraw. So basically you kind of ended up with maybe some  
20                    excess earnings – the withdrawing partner ended up with extra earnings  
                         distributed to the person and the withdrawing distribution at the –  
                         resulting in a reduction of what the remaining income is to be allocated  
                         to the remaining members. (See Kornfeld Depo. at 149:10-20.)

21 7. Mr. Kornfeld understood that even after the memo and his first conversations with  
22 Mr. Brock, the Fund for the period of July 1 through the year-end 2003 continued to pay  
23 distributions in excess of earnings. (See Kornfeld Depo. at 172:1-12.) After the end of 2003,  
24 Kornfeld had a second conversation wherein he told Mr. Brock that withdrawing investors were  
25 still being overpaid at the time of withdrawal. (See Kornfeld Depo. at 173:1-174:14.)

26 8. Mr. Kornfeld was never asked for advice on how to calculate monthly returns for  
27 the Fund. (See Kornfeld Depo. at 183:25-184:2.) He was never asked for advice on how to  
28 calculate the rates of return for the Fund. (See Kornfeld Depo. at 184:3-5.)

9. Prior to the deposition, Mr. Kornfeld was not aware that in 2004, the Fund's

1 management sent a cover letter to the investors with the 2003 K-1s. (See Kornfeld Depo. at 185:  
2 24-186-8.) He had never seen a copy of the letter which stated among other things, that the Fund  
3 was generating returns above 12%. (*Id.*) Mr. Kornfeld had no discussions with anyone at the  
4 Fund that they were going to tell investors anything about the Fund's performance, in connection  
5 with sending them their K1s. (See Kornfeld Depo. at 187:19-188:1.) Mr. Kornfeld testified that  
6 the Fund was not generating returns above 12% in 2003. (See Kornfeld Depo. at 190:3-20.) In  
7 sum, Kornfeld was concerned and warned Mr. Brock that some investors' capital was transferred  
8 to others because the Fund was not generating sufficient earnings to support monthly returns to  
9 investors as well as fund distributions to withdrawing investors.

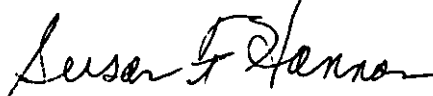
10 10. On March 1, 2004, the Fund sent a letter to investors highlighting "...a few of our  
11 accomplishments for 2003." (Attached hereto as Exhibit 8 is a true and correct copy of the  
12 March 1, 2004 letter to Members of the Fund from Timothy J. Canty, President of Emvest, Inc.,  
13 originally marked as Exhibit 19.) Mr. Canty testified that he sent the letter to investors. (See  
14 Canty Testimony transcript at 247:25-248:11.) The letter stated, "The Fund is continuing to  
15 generate returns above 12%." (See Ex. 8.) The evidence thus establishes that even though Mr.  
16 Brock knew that the Fund's practices were eroding the capital accounts of investors, he took  
17 insufficient corrective action and led investors to believe that the Fund was generating returns  
18 above 12% when the Fund was not.

19 11. Furthermore, the Fund's management, including Mr. Brock, failed to inform the  
20 sales staff that the Fund was not making a 12% return. Bruce Decker testified that he was not  
21 aware of Mr. Brock's discussions with Kornfeld and Levy about the Fund's rate of return or the  
22 erosion of the capital accounts. (See Decker Depo. at 164:13-165:14.) Furthermore, he never  
23 heard Brock discuss the return of principal to investors as part of their monthly checks. (*Id.*)

24 10. In 1984, Mr. Brock's real estate broker's license was suspended for 30 days for a  
25 trust account violation. (See Declaration of Molly M. White in Support of Reply Brief  
26 Supporting Entry of Preliminary Injunction and Permanent Receiver filed Nov. 30, 2004 and  
27 exhibits attached thereto ("Nov. White Dec.")). Then, on March 14, 1994, the California  
28 Department of Corporations ordered Mr. Brock to desist and refrain from further offering or

1 selling securities. (See Nov. White Dec.) Brock also had several other infractions relating to his  
2 broker license that resulted in disciplinary action. (Brock at 59:6-61:3.) In 1996, Brock  
3 voluntarily surrendered his real estate broker license. (Brock at 58:3-7.) In 2000, Brock settled  
4 an action filed by the San Diego District Attorney's Office relating to his activities as a mortgage  
5 broker. (Brock at 56:13-58:7) Mr. Brock agreed to reconvey a deed of trust, was prohibited  
6 from obtaining a real estate broker or sales license for two years, and was required to complete  
7 50 hours of community service. (*Id.*)  
8

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
10 20th day of September, 2005, in Los Angeles, California.

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13 Susan F. Hannan  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE )  
COMMISSION, )

Plaintiff, )

vs. )

Case No. 04 CV 2295 DMS (POR)

EMVEST MORTGAGE FUND, )  
LLC; EMVEST, INC.; and )  
MILON LYLE BROCK, )

Defendants. )  
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DEPOSITION OF GARY KORNFELD

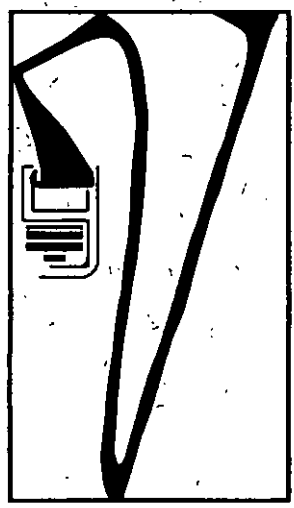
San Diego, California

September 1, 2005

VOLUME II

(Pages 76 - 221)

VERBATIM



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San Diego, California, September 1, 2005

8:34 a.m.

GARY KORNFELD,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. PISTORIUS:

Q. Good morning, Mr. Kornfeld.

A. Good morning.

Q. Thank you for making time to continue this deposition that we began back in July. Certainly appreciate everyone coordinating today. Hopefully we'll burn through this pretty quickly.

The court reporter's just sworn you in. I know during our first deposition we went through some rules and some guidelines.

And do you understand you're under oath, just as you were the first time around?

A. Yes.

Q. And it's the same oath you would take in a court of law in front of a judge or jury, and your testimony will have the same effect?

A. Yes.

Q. Okay. Great.

1 this a judgment call or do you know?

2 A. My understanding was that it could be treated  
3 the same.

4 Q. Could be?

5 A. Yeah.

6 Q. But not must?

7 A. I believe it had to be.

8 Q. Okay.

9 A. That's my understanding.

10 Q. So we can all sort of refresh our  
11 recollections here about previous testimony, is it  
12 accurate that you believe your first engagement with the  
13 fund was in approximately the end of 2002, first part of  
14 2003?

15 A. Yes.

16 Q. Believe the December 2002 financials were your  
17 first, or maybe October?

18 A. October.

19 Q. Thank you.

20 And then your last -- well, when was the last  
21 time that Kornfeld and Levy performed services for  
22 Emvest?

23 A. It was in 2004 for the 2003 year ending.

24 Q. So for the -- for the December 31st, 2003,  
25 financial statements?

1 MS. HANNA: Objection. Vague and ambiguous.

2 THE WITNESS: No, I did not.

3 BY MR. PISTORIUS:

4 Q. At any time during your engagement with  
5 Emvest, did you have an understanding of what would  
6 happen to the investor's capital --

7 MS. HANNA: Objection. Vague and ambiguous.

8 THE WITNESS: No, I didn't.

9 BY MR. PISTORIUS:

10 Q. And I believe we covered this last time, so I  
11 apologize if we did, but to make sure, the answer to  
12 that question was not relevant to your work, performing  
13 the services you performed for the fund; is that  
14 correct?

15 A. That's correct.

16 (Mr. Canty entered the room.)

17 BY MR. PISTORIUS:

18 Q. Would you please flip to what has been  
19 previously marked as Exhibit 197.

20 Do you recognize this document?

21 A. Yes.

22 Q. What is it?

23 A. It's a memo that I wrote -- it's a fax memo I  
24 wrote to Lyle Brock on August 16, 2003.

25 Q. Have you seen this document at any time

1 Q. What issue?

2 A. This issue of paying investors in full based  
3 on their original capital contributed without taking  
4 into consideration the activity of the fund between the  
5 time they originally invested and the time that they  
6 withdrew.

7 Q. Okay.

8 A. Their allocated activity, the investors.

9 Q. Okay. So was your concern when you wrote this  
10 about payments being made to investors who were  
11 withdrawing?

12 A. Yes.

13 Q. In your mind, did this memo address monthly  
14 distributions to investors who weren't withdrawing?

15 A. No.

16 Q. Why did you feel you needed to raise this with  
17 Mr. Brock?

18 A. Because I thought that they may be overpaying  
19 withdrawing members -- or investors.

20 Q. Okay. But why did you think that that fact  
21 was something you should raise with Mr. Brock?

22 A. I don't think he realized it.

23 Q. Okay. So are you saying you were just trying  
24 to bring to management's attention they may be -- that  
25 the payments to withdrawing investors may be more than

1 Q. That's fine. I understand this is a long time  
2 ago, and I'm just trying to understand whether it was  
3 weeks or months or minutes.

4 A. It wasn't months. You know, it was within a  
5 short time, week, week and a half. It wasn't months.

6 Q. Okay. Whenever that was, how did you follow  
7 up with Mr. Brock? Was it a phone call? An in-person  
8 meeting? Telegram? Probably wasn't a telegram.

9 A. I believe it was in a phone call. It may not  
10 have been specifically on this memo. It may have been  
11 just in rapping -- you know, in other questions we had  
12 in -- you know, in completing the footnotes to the  
13 financial statements and finishing the financial  
14 statements. But, you know, I remembered discussing  
15 following up with him on this because I thought it was  
16 an important issue.

17 Q. And your recollection was that was telephonic?

18 A. Yes.

19 Q. Do you recall how much time you spent,  
20 approximately, discussing this particular issue? You  
21 said it might have been combined with other discussion  
22 topics. Was it five minutes or an hour-long discussion  
23 about this point or somewhere in between?

24 A. It was -- it was a brief -- it was not an  
25 hour, but it wasn't 15 minutes. So it was somewhere

1 MR. SANCHEZ: Your partner is Mr. Levy, just  
2 for the record, right?

3 THE WITNESS: Yes.

4 BY MR. PISTORIUS:

5 Q. You testified to the effect that your concern  
6 was that people who are withdrawing from the fund are  
7 receiving more than their capital balance; is that  
8 accurate?

9 A. Yes.

10 Q. Were you concerned that the capital balance  
11 was less than the original capital balance?

12 A. Yes.

13 MS. HANNA: Objection. Vague and ambiguous.

14 BY MR. PISTORIUS:

15 Q. What concerned you about that, or why were you  
16 concerned?

17 A. That goes to the reason why I raised the issue  
18 and so -- why was I concerned you asked?

19 Q. Yes.

20 A. Well, because I thought that withdrawing  
21 investors were receiving more -- possibly more than  
22 their allocated -- than what their capital accounts  
23 would be if you allocated all these items, all this  
24 activity in the fund, since they became investors.

25 Q. Because their current capital balance was, to

1 your understanding, less than their original capital  
2 balance but --

3 A. Yes, yes. If you looked at the -- if you  
4 looked at the activity of the fund in total, which  
5 would -- you know, which is allocated to all the  
6 members, my feeling was that the member -- the  
7 withdrawing members were being overpaid to what their  
8 true allocated capital -- to their share of capital  
9 would be to the date of that withdrawing.

10 Q. So your concern was overpayment to withdrawing  
11 investors?

12 A. Correct.

13 Q. Were you concerned at all that the current  
14 capital balance was less than the original invested,  
15 that fact alone?

16 MS. HANNA: Objection. Vague and ambiguous.

17 THE WITNESS: I wasn't concerned about that.

18 BY MR. PISTORIUS:

19 Q. Does this memo address the fact that the  
20 current capital balance was lower than the original  
21 balance?

22 A. No.

23 Q. Did you intend this memo to address monthly  
24 distributions, or was this about withdrawing investors?

25 A. It was about withdrawing members -- the amount

1 Q. So you had an engagement letter for 2002?

2 A. Yes.

3 Q. And 2003?

4 A. Yes.

5 Q. And you did not have one for 2004?

6 A. Not that I know of.

7 Q. Did you consider Kornfeld and Levy's services  
8 to be terminated as of January 1, 2004?

9 A. You mean, as of December 2003? Oh, wait,  
10 excuse me. Say that again. Sorry.

11 Q. Did Kornfeld and Levy perform any services for  
12 Emvest in the calendar year 2004?

13 A. Yes.

14 Q. And you --

15 A. For 2003, yes.

16 Q. For the period ended 2003?

17 A. Yes.

18 Q. Did Kornfeld and Levy perform any services for  
19 the fund that related to any period beyond December 31,  
20 2003?

21 A. No.

22 Q. Do you know whether these rules that we talked  
23 about disengaging from the client provide any  
24 requirements if you are not going to renew an engagement  
25 with a client?

1 earlier this morning, you said that you understood or  
2 believed that income was allocated based on  
3 distributions to investors. So I'm trying to understand  
4 what you meant by that statement.

5 A. Okay. To clarify that, income -- okay. We  
6 allocated income to the investors based on -- based on a  
7 couple things. One of them being distributions to  
8 investors. So if an investor got \$2,000 distribution  
9 and -- out of \$100,000 in distributions, then he would  
10 have been getting 2 percent of the income that we  
11 allocated using that method.

12 Q. Okay. You said there were two -- based on  
13 two. What was the second?

14 A. To an extent that -- to an extent that a  
15 withdrawal had been made to an investor that exceeded  
16 their capital account, you know. Then in order for  
17 their capital account not to be a negative at the end of  
18 the year, we had to allocate to them extra income.

19 Q. Extra income to make sure that the K-1 for the  
20 withdrawing investor remained at zero?

21 A. Correct. And the other part that would have  
22 factored into a withdrawing partner would have been  
23 their share of syndication costs because that -- for tax  
24 purposes isn't allocated until the -- you know, the  
25 withdrawing partner doesn't pick their share of

1 A. Right. On the tax basis.

2 Q. On the tax basis, right?

3 In order to avoid -- that was done in order to  
4 avoid negative capital accounts for those withdrawing  
5 investors, correct?

6 A. Correct. And it was done for that and also  
7 to -- and also to fairly allocate the remaining income  
8 to those partners that did not withdraw.

9 Q. Why?

10 A. Well, if you got a -- if you received a  
11 withdrawing distribution in excess of what you may have  
12 been entitled to, then indirectly it resulted in a  
13 reduction of earnings -- or a reduction of something to  
14 the remaining partners who didn't withdraw. So  
15 basically you kind of ended up with maybe some excess  
16 earnings -- the withdrawing partner ended up with extra  
17 earnings distributed to the person and the withdrawing  
18 distribution at the -- resulting in a reduction of what  
19 the remaining income is to be allocated to the remaining  
20 members.

21 Q. So let me see if I understand, and correct me  
22 if I'm wrong.

23 So basically, a withdrawing investor was  
24 overpaid, as you have testified to earlier today?

25 A. Yes.

1           A.    Well, the basis for writing that was that  
2 investors were receiving their original invested capital  
3 without any reduction -- without any adjustment up or  
4 down for items that affect an investor's capital, such  
5 as allocated syndication costs, earnings, prior  
6 distributions, and -- you know, and those things.  So --

7           Q.    What was the reason why -- and in -- this memo  
8 explains some of the reasons why you believed  
9 withdrawing investors were overpaid, correct?

10           MR. PISTORIUS:  Objection.  Document speaks  
11 for itself.

12           THE WITNESS:  Yeah.

13 BY MR. SANCHEZ:

14           Q.    Tell me those reasons that you believed at the  
15 time in August of 2003 as to why withdrawing investors  
16 had been overpaid.

17           A.    Because -- can I look --

18           Q.    Sure.  Of course.

19           A.    Well, you know, there's -- my understanding at  
20 that time was that the overall -- if you looked at the  
21 activity of the fund of earnings and partner share of  
22 syndication costs and that if you netted all that  
23 together, that that was less than the distributions they  
24 had received.  So that being said, I felt I didn't have  
25 the calculation.  But I felt that by paying -- for sure

1 those withdrawing investors equal zero?

2 A. Well, not -- in order not to have -- you know,  
3 you had -- that's not exactly it. The net result was  
4 that. But the reasoning is that if I -- if I allocated  
5 the income -- if I allocated, in that example, \$9,000 of  
6 income to the nonwithdrawing partner, they would never  
7 be adjusted to the fact that \$1,000 of excess had been  
8 paid to the withdrawing member -- to the withdrawing  
9 investor. So by doing it this way, it really adjusted  
10 the re- -- it really adjusted for the overpayment to the  
11 remaining members.

12 Q. Which is, in fact, what happened as a result  
13 because the investor that withdrew took more than he  
14 should have -- he received more than he should have  
15 gotten?

16 A. Right.

17 Q. And so is it accurate that as a result someone  
18 had to cover that overpayment?

19 MR. PISTORIUS: Objection. Vague and  
20 ambiguous.

21 MR. SEMMER: Do you understand that?

22 THE WITNESS: Yeah.

23 I mean, I guess the overpayment impacted the  
24 remaining members' value of their investments.

25 ///

1 BY MR. SANCHEZ:

2 Q. Negatively?

3 A. Yes.

4 Q. By the amount of overpayment -- so for the  
5 2003 period, the remaining investors' value of the  
6 investment, as reflected in their capital accounts, was  
7 negatively impacted by the overpayments to the  
8 withdrawing investors for 2003; is that right?

9 A. Yes.

10 Q. So in your memo you pointed that out -- well,  
11 who -- did you have discussions with Mr. Brock?

12 MR. SEMMER: Wait, wait, wait. You said in  
13 your memo --

14 MR. SANCHEZ: I know. I'm sorry.

15 MR. SEMMER: I take it the answer is yes.

16 Did you point that out --

17 BY MR. SANCHEZ:

18 Q. Did you point out in your memo -- let's look  
19 at the last paragraph in your memo. If you look -- I'm  
20 on the first paragraph.

21 You point out there's an overstatement of what  
22 is due to the partner, correct?

23 A. Yes.

24 MR. PISTORIUS: Objection. Document speaks  
25 for itself.

1 Q. And in connection with that -- well, at that  
2 time when you had this conversation, is it the case that  
3 for the period of July 1 through the year-end that the  
4 fund continued to pay distributions in excess of  
5 earnings, as far as you remember?

6 MR. PISTORIUS: Objection. Vague and  
7 ambiguous.

8 THE WITNESS: Did I have that conversation  
9 with --

10 MR. SEMMER: No, no. Did you understand that  
11 to be the case?

12 THE WITNESS: Yes, I did.

13 BY MR. SANCHEZ:

14 Q. And so putting aside the syndication cost  
15 issue, when you had the second conversation with  
16 Mr. Brock, the issue overpaying withdrawing investors  
17 because of the fact that net earnings was less than  
18 total distributions to investors, that was still  
19 applicable at that time?

20 MR. PISTORIUS: Vague and ambiguous.

21 MR. SEMMER: Don't answer that. Short, simple  
22 questions, please.

23 THE WITNESS: That question wasn't clear to  
24 me.

25 ///

1 BY MR. SANCHEZ:

2 Q. Did you raise with Mr. Brock, after year-end  
3 when you had the second discussion that you remember,  
4 the same issues that are reflected in Exhibit 197?

5 A. Yes.

6 Q. And as far as you remember, you raised all the  
7 issues that are reflected in Exhibit 197?

8 MR. PISTORIUS: Objection. Misstates  
9 testimony.

10 THE WITNESS: Let me see 197.

11 BY MR. SANCHEZ:

12 Q. Sure.

13 A. I wouldn't say it was all -- you know, exactly  
14 same type of conversation I had with him previously, as  
15 I look at the memo.

16 Q. Tell me in sum or substance what you discussed  
17 with Mr. Brock during that second conversation that you  
18 remember.

19 MR. PISTORIUS: Asked and answered.

20 MR. SEMMER: Asked and answered.

21 BY MR. SANCHEZ:

22 Q. Go ahead.

23 A. It was that while the partial reduction for  
24 some syndication costs was in the right direction that  
25 there wasn't -- you know, that there wasn't a

1 that.

2           During the period of the work that you did for  
3 the fund, did you ever do any forensic accounting?

4           A.    No.

5           Q.    Did you ever provide any auditing services?

6           A.    No.

7           Q.    Did you ever trace what funds were used to  
8 cover the excess amount of distributions when compared  
9 to net income?

10           MR. PISTORIUS:  Objection.  Vague and  
11 ambiguous.

12 BY MR. SANCHEZ:

13           Q.    For any period of time.

14           MR. PISTORIUS:  Objection.  Vague and  
15 ambiguous.  Lacks foundation.

16           THE WITNESS:  No.

17 BY MR. SANCHEZ:

18           Q.    Do you know what source of funds were used to  
19 pay any of the monthly distributions made to investors  
20 through -- for any period?

21           MR. PISTORIUS:  Same objections.

22           THE WITNESS:  Came from the checking  
23 account.

24 BY MR. SANCHEZ:

25           Q.    Other than coming from the checking account,

1 Q. As far as you know, were any of the financial  
2 statements that you compiled used to solicit investors?

3 A. As far as I know, the financial statements  
4 were not given to prospective investors. I was going to  
5 say they did put our balance sheet -- you know, they did  
6 put a balance sheet into the revised prospectus, a  
7 second one, and -- but -- and they told me about that,  
8 but, to me, that wasn't being used -- that wasn't our  
9 financial saying here's financials prepared by Kornfeld  
10 and Levy, rely upon them -- you know, like some sort of  
11 reason why you should be an investor.

12 Q. And the balance sheet comes from the  
13 QuickBooks program?

14 A. I don't remember where it came from, but it --  
15 the numbers were the same as the numbers used in our --  
16 with the same numbers on our financial statement -- the  
17 same numbers as on our prepared financial statement. I  
18 think it was the year ended December 31, '02.

19 Q. Besides the balance sheet, as far as you know,  
20 was any other part of your compilation, financial  
21 statements or notes ever made part of any solicitation  
22 materials?

23 A. Not that I know of nor anything mentioned of  
24 Kornfeld and Levy.

25 Q. Were you ever asked for your advice or opinion

1 on how to calculate monthly returns?

2 A. No.

3 Q. Were you ever asked for your advice or opinion  
4 on how to calculate the rates of return for the fund?

5 A. No.

6 MR. PISTORIUS: Objection. Vague and  
7 ambiguous. Asked and answered.

8 BY MR. SANCHEZ:

9 Q. Were you ever -- did you play any role in  
10 drafting or revising the prospectus or any offering  
11 materials?

12 MR. PISTORIUS: Vague and ambiguous.

13 THE WITNESS: No.

14 BY MR. SANCHEZ:

15 Q. Were you ever asked for your advice or opinion  
16 about any of the language in any of the offering  
17 materials?

18 A. No.

19 Q. Were you ever asked to interpret the language  
20 in any of the offering materials?

21 MR. PISTORIUS: Vague and ambiguous.

22 THE WITNESS: No.

23 BY MR. SANCHEZ:

24 Q. Were you ever asked to review the prospectus  
25 to determine if any of the fund's practices were

1 consistent with the prospectus?

2 MR. PISTORIUS: Vague and ambiguous.

3 THE WITNESS: No.

4 BY MR. SANCHEZ:

5 Q. Did you ever provide an opinion as to whether  
6 the fund's practices were consistent with the  
7 prospectus?

8 MR. PISTORIUS: Vague and ambiguous.

9 THE WITNESS: No, we didn't.

10 BY MR. SANCHEZ:

11 Q. Do you know what prospective investors for the  
12 fund were told by sales people?

13 A. No.

14 Q. Let me show you -- I think you have --  
15 Exhibit 19 is not in there?

16 MR. SEMMER: Are these the court reporters,  
17 241 and 242?

18 THE WITNESS: This goes to the court reporter?

19 MR. SEMMER: Yeah.

20 MR. PISTORIUS: What is it?

21 MR. SANCHEZ: It's the letter sent with the  
22 K-1s.

23 BY MR. SANCHEZ:

24 Q. Exhibit 19 -- let me just identify it for the  
25 record. It's a March 1st, 2004, letter to the members

1 of the Emvest Mortgage Fund from Tim J. Canty. There's  
2 no signature on this.

3 Did you -- have you ever seen this Exhibit 19  
4 during the time that you were engaged by the fund?

5 A. No.

6 Q. Were you aware that a cover letter was sent to  
7 investors when their K-1s were sent to them in 2004?

8 A. From Emvest, Inc., no.

9 MR. PISTORIUS: Objection --

10 BY MR. SANCHEZ:

11 Q. From anyone.

12 A. Well, we -- our K-1s, as we prepared them,  
13 include a cover letter.

14 Q. You prepared a cover letter?

15 A. The tax program does, and it kind of says, you  
16 know -- it would be --

17 Q. Do you remember in sum or substance what the  
18 cover letter says?

19 A. I could print you out a sample. It's a form  
20 letter, Enclosed is your K-1. You need to use this  
21 preparing your return. It may have said if you have  
22 questions, consult a tax advisor or contact -- something  
23 to that effect, very generic. And it's -- we print it  
24 so it's actually from Emvest Mortgage Fund. You know,  
25 it's not with our name on it. But it's a little cover

1 sheet that's attached to the front of the K-1 package  
2 that the investors get which has their federal and state  
3 K-1s attached to it and any statements.

4 Q. Does your letter in any way highlight any of  
5 the fund's accomplishments or performance?

6 A. No, it does not.

7 Q. If you look at Exhibit 19, were you aware that  
8 anyone from Emvest, Inc., or the fund highlighted the  
9 fund's performance when enclosing the K-1s to investors?

10 MR. PISTORIUS: Objection. Lacks foundation.  
11 Assumes facts not in evidence.

12 THE WITNESS: You're asking me did I know they  
13 were providing this with the K-1s?

14 BY MR. SANCHEZ:

15 Q. Now I'm asking -- it's a broader question.

16 A. Can you repeat --

17 Q. My question is -- I'm anxious to get out, so  
18 I'll slow down. So I apologize.

19 My question is broader than the letter.  
20 You've testified you've never seen the letter,  
21 Exhibit 19.

22 Did you have any discussions with anyone at  
23 the fund or Emvest, Inc., that they were going to tell  
24 investors, in connection with sending them their K-1,  
25 anything about the performance of the fund?

1 A. No.

2 MR. PISTORIUS: Assumes facts not in evidence.  
3 Lacks foundation.

4 BY MR. SANCHEZ:

5 Q. Did you ever -- well, anyways, that's fine.

6 Did you ever discuss with Mr. Brock how it is  
7 the 12 percent -- well, let me ask you again.

8 Did you ever discuss with Mr. Brock how the  
9 fund determined what return to pay to investors?

10 A. No.

11 Q. Do you know how the fund calculated the  
12 percentage return that it paid to investors?

13 MR. PISTORIUS: Objection. Vague and  
14 ambiguous. Lacks foundation.

15 THE WITNESS: How it came up with the  
16 12 1/2 percent?

17 BY MR. SANCHEZ:

18 Q. Yes.

19 A. No.

20 Q. If you look at Exhibit 19, it says that the  
21 fund is continuing to generate returns above 12 percent.

22 Based on the work you did on the financial  
23 statements, is that statement -- was that statement true  
24 or false as of the day of March 2004?

25 MR. PISTORIUS: Lacks foundation. Calls for

1           No, no. Let me ask it again.

2 BY MR. SANCHEZ:

3           Q. Putting aside whether someone knew it was  
4 false based on the work that you did before March of  
5 2004 in connection with the 2003 year-end financial  
6 statements, is it accurate that the fund was continuing  
7 to generate returns above 12 percent?

8           MR. SEMMER: This is for the year 2003?

9           MR. SANCHEZ: Correct.

10          THE WITNESS: Based on our preparation of the  
11 financial statement and looking at the capital account  
12 reconciliation in our financial statement, the net  
13 income we reported is less than the distributions we  
14 reported. So based on that it would mean that the  
15 earnings were not in excess -- were not -- were  
16 not -- well -- they were less than the distributions,  
17 and the distributions were at, if I recall correct,  
18 12 1/2 percent. So that's what leads me to believe this  
19 may not -- you know, I'm -- without saying false or  
20 true, I'm just saying my financials don't show that.

21          MR. SEMMER: And just to clarify the record, I  
22 think the witness is referring to a document 196.4.

23                   Is that a fair statement?

24          THE WITNESS: Yes.

25          MS. HANNA: That refers to Exhibit 196 of

1 STATE OF CALIFORNIA)  
 ) ss.  
2 COUNTY OF SAN DIEGO)

3  
4 I, CHRISTINE E. MILKOVITS, Certified Shorthand  
5 Reporter licensed in the State of California, License  
6 No. 12650 do hereby certify: That the witness in the  
7 foregoing deposition was first duly sworn by me to  
8 testify to the truth, the whole truth, and nothing but  
9 the truth in the foregoing cause; that the deposition  
10 was then taken before me at the time and place herein  
11 named; that said deposition was reported by me in  
12 shorthand and transcribed through computer-aided  
13 transcription under my direction; and that the foregoing  
14 is a true record of the testimony elicited at  
15 proceedings had at said deposition.

16 I do further certify that I am a disinterested  
17 person and am in no way interested in the outcome of  
18 this action or connected with or related to any of the  
19 parties in this action or to their respective counsel.

20 In witness whereof, I have hereunto set my  
21 hand this 12 day of September, 2005.

22  
23 Christine E. Milkovits

24 CHRISTINE E. MILKOVITS, CSR 12650,  
25 RPR



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

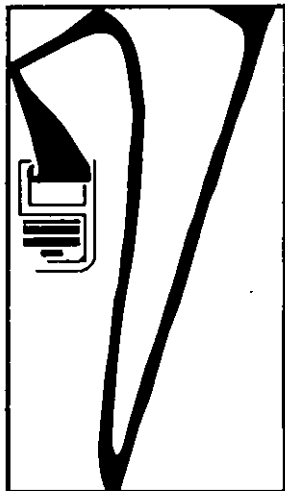
EMVEST MORTGAGE FUND, LLC;  
EMVEST, INC.; and MILON LYLE  
BROCK,

Defendants.

Case No. 04 CV 2295 DMS (POR)

DEPOSITION OF HARLAN LEVY  
Volume I  
(Pages 1 through 204)  
Taken at San Diego, California  
Thursday, July 28, 2005

VERBATIM



Reported By: Tammy L. Rampone, CSR  
Certificate No. 6511

**VERBATIM REPORTING SERVICE**

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Certified Shorthand Reporters  
750 "B" Street, Suite 1925  
San Diego, California 92101  
(619) 232-3376 • FAX (619) 232-2419  
E-mail: verbatimjp@aol.com

**CERTIFIED COPY**

EXHIBIT 2 PAGE 27

REPORTING SERVICE

1 San Diego, California; Thursday, July 28, 2005

2 10:03 a.m.

3

4 HARLAN LEVY,

5 having been first duly sworn, was examined as follows:

6

7 EXAMINATION

8 BY MR. PISTORIUS:

9 Q. Morning.

10 A. Good morning.

11 Q. Could you please state and spell your full name  
12 for the record.

13 A. Harlan, H-a-r-l-a-n, Levy, L-e-v-y.

14 Q. Mr. Levy, I know that you gave testimony in  
15 front of the SEC during this investigation, but other  
16 than that, have you ever been deposed before?

17 A. Are you talking about depositions on other  
18 matters?

19 Q. Yes.

20 A. Yes.

21 Q. How many times?

22 A. More than a dozen times.

23 Q. So you're pretty familiar with the process?

24 A. Yes.

25 Q. When was the last time you were deposed?

1 Q. CNA Foreclosure?

2 A. No.

3 Q. Unified Mortgage Services?

4 A. No.

5 Q. Have you heard of all those companies I just  
6 listed?

7 A. Yes.

8 MR. PISTORIUS: Let's go off the record real  
9 quick.

10 (Brief recess taken.)

11 MR. PISTORIUS: Let's go back on the record.

12 BY MR. PISTORIUS:

13 Q. Mr. Levy, just one quick thing before we turn  
14 to the first exhibit here. Have you ever done any  
15 accounting or other work for Mr. Brock as an individual?

16 A. No.

17 Q. Mr. Canty?

18 A. No.

19 Q. Any officers of Emvest, Inc., that you're aware  
20 of?

21 A. None that I'm aware of.

22 MR. PISTORIUS: Okay. I'm going to ask the  
23 court reporter to mark as Exhibit 182 this document.

24 (Exhibit 182 was marked for identification.)

25 ///

1 BY MR. PISTORIUS:

2 Q. Take a second to take a look at that.

3 Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. This is an engagement letter.

7 Q. Okay. And is this the contract by which

8 Kornfeld & Levy performed services for Emvest, Inc. and

9 Emvest Mortgage Fund LLC?

10 A. As I said, this is our engagement letter for

11 Emvest Mortgage LLC.

12 Q. For just the fund?

13 A. To the best of my knowledge.

14 Q. On the second page, do you know whose signature

15 that is above "Kornfeld & Levy"?

16 A. Mr. Kornfeld.

17 Q. Have you seen this document before?

18 A. Yes.

19 Q. Would you -- good. You're on the second page.

20 At the top, the first paragraph reads "Because

21 of Kornfeld & Levy CPA's lack of independence with

22 Emvest, Incorporated" -- then goes on to say, you're

23 going to insert a certain sentence into your, I guess,

24 financial statements that says "We are not independent

25 with respect to Emvest Mortgage Fund LLC."

1 MR. PISTORIUS: Yes, the full disclosure that  
2 we're discussing here, the notes to the financial  
3 statements.

4 MR. SEMMER: Okay.

5 MR. PISTORIUS: I'll ask the court reporter to  
6 mark as Exhibit 197 -- this is a fax cover sheet, dated  
7 August 16, 2003.

8 (Exhibit 197 was marked for identification.)

9 BY MR. PISTORIUS:

10 Q. Have you seen this document before?

11 A. Yes.

12 Q. What is it?

13 A. It is a fax to Lyle Brock on August 16, 2003.

14 Q. Who prepared this?

15 A. Gary Kornfeld and myself.

16 Q. It's signed by Mr. Kornfeld, but you both  
17 prepared it?

18 A. We both collaborated on it, yes.

19 Q. What was the purpose of your preparation of  
20 this fax?

21 A. Our concerns of partners withdrawing from the  
22 partnership and being paid full amount of their  
23 investment when in -- when they may not have been due  
24 that full amount.

25 Q. Okay. Why is that a concern?

1 STATE OF CALIFORNIA, )  
2 COUNTY OF SAN DIEGO. ) SS.

3  
4 I, Tammy L. Rampone, a Certified Shorthand  
5 Reporter, in and for the State of California,  
6 Certificate No. 6511, do hereby certify:

7 That the witness in the foregoing  
8 deposition was by me first duly sworn to testify to the  
9 truth, the whole truth and nothing but the truth in the  
10 foregoing cause; that the deposition was then taken  
11 before me at the time and place herein named; that said  
12 deposition was reported by me in shorthand and then  
13 transcribed, under my direction, through computer-aided  
14 transcription, and that the foregoing is a true record  
15 of the testimony elicited and proceedings had at said  
16 deposition.

17 I do further certify that I am a disinterested  
18 person and am in no way interested in the outcome of  
19 this action or connected with or related to any of the  
20 parties in this action or to their respective counsel.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 on this 10th day of August, 2005.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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SECURITIES AND EXCHANGE COMMISSION,	)	
	)	CASE NO.
Plaintiff,	)	04 CV 2295
	)	DMS (LSP)
vs.	)	
	)	
EMVEST MORTGAGE FUND, LLC, EMVEST,	)	
INC., and MILON LYLE BROCK,	)	
	)	
Defendants.	)	
	)	

-----

DEPOSITION OF ROBERT B. DECKER

TAKEN ON: Thursday, February 24, 2005

TAKEN AT: 880 Front Street  
Fifth Floor  
San Diego, California

REPORTED BY: KATHRYN B. CONNELL  
CSR NO. 3079, RPR, CRR



1 San Diego, CA; Thursday, February 24, 2005; 10:10 a.m.

2

3

ROBERT B. DECKER,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5

6

EXAMINATION

7

BY MS. HANNAN:

8

Q. My name is Susan Hannan, and Molly White has

9

stepped out of the room for a moment to make additional

10

copies of the documents you produced today. Also in the

11

room are Luke Pistorius and Milon Brock, Lyle Brock.

12

Please state your full name for the record.

13

A. Robert Bruce Decker.

14

Q. And would you spell that, please, for the

15

record.

16

A. D-E-C-K-E-R.

17

Q. I'd like to go over some of the guidelines we

18

are going to follow for your deposition today. You have

19

been placed under oath, and the oath that you just took

20

to tell the truth is the same that is used in court.

21

The Commission may submit today's testimony as evidence

22

in court and/or some other tribunal. For this reason,

23

you should make every effort to give your best, most

24

complete and honest answers to my questions today.

25

Do you understand that?

EXHIBIT 3 PAGE 34

5

Legalink - Los Angeles

800-826-0277 818-986-5270 Fax 818-783-7310 www.legalink.com

1 A lot of people would ask us how -- "How do  
2 you do it?"

3 And I'd just tell them, "It's a trade secret.  
4 We are not going to tell you how we do it. We just do  
5 it."

6 And they seemed to be happy with that as long  
7 as they got their check every month. So -- I guess if  
8 the checks stopped coming in, they are going to ask more  
9 questions. But most of my clients were just -- you  
10 know, had a level of trust and rapport built with them  
11 and we had credibility and diligence, integrity and  
12 discipline, and they liked us. All my clients loved me.

13 Q. Did anyone ever tell you that the -- Kornfeld  
14 and Levy told Mr. Brock that the Fund was not generating  
15 12 percent returns?

16 MR. PISTORIUS: Objection; misstates evidence.

17 THE WITNESS: I wasn't aware of that. As far  
18 as I was concerned, it was always making 12 percent.

19 BY MS. HANNAN:

20 Q. Did anyone ever tell you that Mr. Kornfeld or  
21 Mr. Levy and Mr. Brock discussed the fact that capital  
22 accounts on the K-1's had to be reduced because the  
23 capital was being eroded by the payment of 12 percent  
24 returns?

25 MR. PISTORIUS: Objection; misstates evidence.

1 THE WITNESS: No, never came up in my -- never  
2 came up to me. Remember, I was just a salesperson, you  
3 know, on a need-to-know basis. A lot of these things, I  
4 didn't need to know.

5 BY MS. HANNAN:

6 Q. Did you ever discuss the return of principal  
7 to investors as part of their monthly checks with  
8 Mr. Brock?

9 MR. PISTORIUS: Asked and answered.

10 THE WITNESS: Never came up, to my knowledge.

11 BY MS. HANNAN:

12 Q. Did you ever see any of the financials  
13 prepared by Kornfeld and Levy?

14 A. No.

15 MR. PISTORIUS: Vague and ambiguous.

16 THE WITNESS: No, never saw them.

17 BY MS. HANNAN:

18 Q. Did Gregg Johnson ever talk to you about the  
19 Fund?

20 MR. PISTORIUS: Vague and ambiguous.

21 THE WITNESS: No.

22 BY MS. HANNAN:

23 Q. From time to time there were different  
24 prospectuses; is that accurate?

25 A. Only two that I know of.

1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF SAN DIEGO )  
4

5 I, Kathryn B. Connell, CSR No. 3079, CRR, in  
6 and for the State of California, do hereby certify:

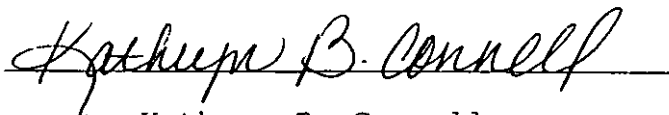
7 That, prior to being examined, the witness  
8 named in the foregoing deposition was by me duly  
9 sworn to testify the truth, the whole truth and  
10 nothing but the truth;

11 That said deposition was taken down by me in  
12 shorthand at the time and place therein named,  
13 and was thereafter reduced to typewriting under my  
14 direction, and the same is a true, correct and  
15 complete transcript of said proceedings;

16 I further certify that I am not interested  
17 in the event of the action.

18 Witness my hand this 15<sup>th</sup> day of  
19 March, 2005.

20  
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Kathryn B. Connell  
CSR 3079, RPR, CRR



ORIGINAL

1

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. LA-2864

5 EMVEST MORTGAGE FUND, LLC )

6 )

7 WITNESS: Milon Lyle Brock

8 PAGES: 1 through 185

9 PLACE: Securities and Exchange Commission

10 5670 Wilshire Boulevard, 11th Floor

11 Los Angeles, California 90036

12 DATE: Monday, August 23, 2004

13

14 The above-entitled matter came on for hearing, pursuant  
15 to notice, at 10:20 a.m.

16

17

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22

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

## P R O C E E D I N G S

1  
2 MS. HANNAN: Okay. On the record at 10:20 on  
3 August 23, 2004.

4 Would you please raise your right hand?  
5 Whereupon,

6 MILON LYLE BROCK

7 was called as a witness and, having been first duly sworn,  
8 was examined and testified as follows:

9 EXAMINATION

10 BY MS. HANNAN:

11 Q Please state your full name and spell your name for  
12 the record.

13 A Milon Lyle Brock, M-I-L-O-N L-Y-L-E B-R-O-C-K.

14 MS. HANNAN: I am Susan Hannan, and Victoria Levin  
15 will be here. She's taking care of making copies of the  
16 background questionnaire that you brought with you today. We  
17 are both officers of the Commission for purposes of this  
18 proceeding.

19 This is an investigation by the United States  
20 Securities and Exchange Commission of --

21 Let the record reflect that Ms. Levin has returned,  
22 and that we started the initial commencement of the record  
23 while she was out of the room.

24 As I was saying, this is an investigation by the  
25 United States Securities and Exchange Commission in the

1 A Yes.

2 Q Did she help you in your responses to any other  
3 part of this questionnaire?

4 A No.

5 Q Did anybody else help you prepare any other -- any  
6 part of this questionnaire?

7 A No.

8 Q Is this your handwriting --

9 A Yes.

10 Q -- throughout the questionnaire?

11 Okay. That is it.

12 BY MS. HANNAN:

13 Q Response to question 22, you have indicated that  
14 you have been a defendant in a criminal proceeding, and I  
15 note that attached to the questionnaire is a copy of a final  
16 judgment in the case of The People of the State of California  
17 vs. Milon Lyle Brock, and the Case Number is 742889. What  
18 were you involved in that matter for?

19 A I arranged a loan for a party, a borrower, using a  
20 power of attorney, and I funded the loan, the borrower  
21 decided that they wanted to cancel, and I advised them that  
22 it was too late for them to cancel and that the loan was  
23 recorded against their property, and that there was no right  
24 of rescission because it was a income producing property, and  
25 the woman advised me that there was no power of attorney that

1 she told me about, that she told me she had. And I told her  
2 that I expected to be paid my commission if she didn't want  
3 the loan, and she didn't have to have the loan, but that I  
4 had fulfilled my contract with her. And she felt that that  
5 was unfair, and she had a complaint filed with the DA's  
6 office, and she called me one day and wanted to talk about  
7 it, and she asked me if I would -- what I would do if she  
8 didn't pay me. And I said, "Well, the remedy under a deed of  
9 trust is a foreclosure action." And the DA's office thought  
10 that that was a very ugly thing to say. It may be my right,  
11 but it's ugly. So, in any event, there was a complaint  
12 filed, and later it was reduced to a civil disposition. And  
13 I agreed to do some community service and not pursue the  
14 contract commission. I also later determined that the power  
15 of attorney which would have exonerated me completely was in  
16 the possession of the Deputy DA because he was very upset  
17 over comments that I made about his intelligence at a  
18 cocktail party.

19 Q And I note as part of the settlement, it indicates  
20 that:

21 "You shall not seek to obtain a real  
22 estate broker or salesperson's license  
23 for 24 months from the date of entry of  
24 the judgment."

25 Was your broker's license revoked as a result of

1 this litigation, or did you retire as a result of this  
2 litigation?

3 A Actually, prior to completing this -- because the  
4 litigation went on for about a year -- I actually surrendered  
5 my broker's license, and as part of the agreement I agreed  
6 not to renew it. I had the right to renew it, but I agreed  
7 not to renew it.

8 Q Have you ever renewed it since this time?

9 A No, I haven't.

10 Q Has your real estate license been -- was your --  
11 other than this, what you just said about this matter and  
12 retiring your license voluntarily, was your license ever  
13 revoked prior to that time?

14 A It was suspended many years ago, I believe in '84,  
15 and the process by which -- it's my understanding the process  
16 by which they suspend is they revoke, and then they reissue  
17 whether it's one day later or 30 days later.

18 Q So, in '84 there was --

19 A They revoked.

20 Q -- they revoked it, and then it was --

21 A And then reissued it.

22 Q -- reissued. What was that revocation for?

23 A I believe it was trust account violations.

24 Q And specifically, what did they allege? Well,  
25 first of all, was this revoked by the Department of Real

1 Estate?

2 A Yes.

3 Q That's the entity that issues licenses to real  
4 estate agents and brokers. Is that correct?

5 A That's correct.

6 Q And was it a broker's license that you had in '84,  
7 or a sales license?

8 A Broker's license.

9 Q And it was revoked for --

10 A Trust account --

11 Q -- trust account violations?

12 A Yeah, trust fund violations.

13 Q What were the violations?

14 A There were several cited. One that sticks out in  
15 my mind, I had too much money in my trust account.  
16 Specifically, I had \$500 in my trust account to cover the  
17 cost of checks and bank fees. And during an audit they  
18 determined that I had the \$500 and said that's excessive.  
19 And I said, "Well, the law says whatever the broker deems is  
20 necessary to cover expenses." And of course, they promptly  
21 advised me that the rules of the Commissioner had the force  
22 and effect of the law, and the Commissioner fees that \$100 is  
23 ample. I said, "Well, I'll pull \$400 out." "That's fine.  
24 That corrects the problem, but you still mixed your money  
25 with trust money. You violated the law." Additionally,

1 there were some other infractions that were about the same  
2 type of severity. We failed to keep a log on the date that  
3 checks came in and the date they were deposited because  
4 generally it's always the same day. But, specifically, the  
5 log has to say the date that it came in and the date it was  
6 deposited.

7 Q How long was the revocation for in '84?

8 A I don't recall. I think it was 30 days.

9 MR. GOURLEY: I -- just as --

10 MS. HANNAN: I want to just -- just one quick  
11 question.

12 BY MS. HANNAN:

13 Q Were all the violations taken care of and never  
14 repeated again?

15 A There were no continued violations; no. I mean,  
16 there were other audits that produced other things over the  
17 course of 20 years, and that's when I said I -- "I'm  
18 surrendering the license, and I'm no longer going to deal  
19 with it."

20 Q Did any other audits result in revocations or any  
21 kind of disciplinary action?

22 A Most of them resulted in some sort of disciplinary  
23 action. For example, they do what they call a "restriction."  
24 It doesn't restrict you from doing anything, but it --

25 MR. GOURLEY: It's probation.

1 THE WITNESS: It's like a probationary thing. They  
2 indicate it on your license. They give notice to the world  
3 that you've been disciplined by the department.

4 MS. HANNAN: Okay. I didn't mean to --

5 MR. GOURLEY: No, no.

6 MS. HANNAN: -- cut you off, counsel, but --

7 MR. GOURLEY: No.

8 MS. HANNAN: -- I just had those two quick follow-  
9 up questions.

10 MR. GOURLEY: Just the one comment is the  
11 department takes the position -- the Department of Real  
12 Estate takes the position to check this out. Obviously, I  
13 don't expect you to accept my word for it. Anything over a  
14 year's revocation, anything under that can still be a  
15 suspension. So, the answer to your question would have been  
16 it had to have been -- the suspension had to have been under  
17 a year. That's the only thing I was going to --

18 MS. HANNAN: And I think missed our agreed cutoff  
19 for lunch.

20 MR. GOURLEY: Yeah.

21 MS. HANNAN: So, let's go off the record --

22 MR. GOURLEY: Okay.

23 MS. HANNAN: -- at this point.

24 (Off the record at 11:58 a.m. and resumed at 1:10  
25 p.m.)

PROOFREADER'S CERTIFICATE

In the Matter of: *Emvest Mortgage Fund, LLC*

Witness: *Milton X. Bruck*

File Number: *LA-2864*

Date: *8/23/04*

Location: *LAPRO*

This is to certify that I, *Kathleen Gansing*, the undersigned, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

*Kathleen Gansing*

Proofreader's Name

*9/7/04*

Date

I, Nancy Paladino, hereby certify that the foregoing transcript consisting of 183 pages is a complete, true, and accurate transcript of the hearing indicated, held on August 23, 2004, at Los Angeles, California, in Emvest Mortgage Fund, LLC, I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared by me or under my direction.

Nancy Paladino  
Reporter

9/3/04  
Date



# ORIGINAL

154

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. LA-02864-A

5 EMVEST MORTGAGE FUND, )

6 LLC )

7 WITNESS: Timothy Joseph Canty, III

8 PAGES: 154 through 289

9 PLACE: Securities and Exchange Commission

10 5670 Wilshire Boulevard

11 11th Floor

12 Los Angeles, California 90036

13 DATE: Friday, August 20, 2004

14

15 The above-entitled matter came on for hearing, pursuant  
16 to notice, at 10:00 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

## P R O C E E D I N G S

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MS. HANNAN: On the record at 10:05 on August 20, 2004. I am Susan Hannan and this is Kelly Bowers. We are officers of the Commission for purposes of this proceeding. Today we are resuming the examination of Timothy Canty which was adjourned on July 12, 2004. Mr. Canty, are you represented by counsel?

THE WITNESS: Yes I am.

MS. HANNAN: Counsel, would you identify yourself?

MR. GOURLEY: Steven Gourley of Malek and Malek.

MS. HANNAN: Testimony today is a continuation of voluntary testimony, but in the mean time we did serve a subpoena for additional records and today's testimony.

And do you understand that you remain under oath from your previous testimony session?

THE WITNESS: Yes I do.

Whereupon,

TIMOTHY JOSEPH CANTY, III

was called as a witness and, having been previously duly sworn, was examined and testified as follows:

## EXAMINATION

MS. HANNAN: Let the record reflect that a copy of the formal order of investigation in the matter as supplemented will be available during the proceeding for examination. Counsel indicated before we went on the record that there was some

1 invest for a while. When did that stop?

2 A We announced that it was going to be through August  
3 16th, the end of this week, and I've received requests from a  
4 couple of the sales guys that they wanted extensions because  
5 things were in process. So I told them that if they gave me a  
6 list of people that expressed interest and were in the  
7 process of getting the money to us that we would accept it up  
8 through the 31st of August. If I left both of them open, they  
9 wouldn't sell the new one. I have to close it so that  
10 they'll focus on the new one which is their new product.

11 BY MS. HANNAN:

12 Q I'd like to mark the next Exhibit 19. A letter  
13 addressed to the members of Emvest Mortgage Fund dated March  
14 1, 2004. Not signed but your name is on the bottom of it.

15 BY MR. BOWERS:

16 Q I'm sorry who is the counsel that did the document  
17 for Emvest --

18 A Was done by an associate at Dosch and Page who is  
19 no longer there. His name is Derek Lewis and Dosch and Page  
20 is in Irvine.

21 MR. GOURLEY: Newport Beach I think.

22 THE WITNESS: It's 1950 Main and Irvine, second  
23 floor. I couldn't tell you the suite number.

24 BY MS. HANNAN:

25 Q I have put before you Exhibit 19. What is Exhibit

1 19?

2 (SEC Exhibit No. 19 was marked  
3 for identification)

4 A Exhibit 19 is a letter I send out with the K-1's I  
5 believe, yeah, at the end of 2000, or at the beginning of  
6 2004 and it was the result of 2003.

7 Q Actually first the 2003 K-1 be enclosed with the  
8 letter?

9 A Uh-huh.

10 Q That's a yes?

11 A Yes.

12 Q And you indicated the department will post  
13 financials on their web site.

14 A They have.

15 Q Then you go on to indicate that there are a few  
16 accomplishments you want to highlight. The first was Emvest  
17 Mortgage Fund funded 290 loans for over \$25 million dollars.  
18 Is that true?

19 A It is.

20 Q Total fund assets are over \$13,500,000.00 dollars.  
21 Was that true as of March 1, 2004?

22 A Yes.

23 Q The fund is continuing to generate returns above 12  
24 percent. Was that true as of March 1, 2004?

25 A Yes.

PROOFREADER'S CERTIFICATE

In the Matter of: Emvest Mortgage Fund, LLC  
Witness: Timothy Joseph Canty, III  
File Number: LA-02864-A  
Date: August 20, 2004  
Location: LOS ANGELES, CA

This is to certify that I, Larry Baliles (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Larry Baliles  
(Proofreader's Name)

Sept. 1, 2004  
(Date)





**KORNFELD AND LEVY**  
CERTIFIED PUBLIC ACCOUNTANTS

HARLAN LEVY, C.P.A.  
GARY KORNFELD, C.P.A.

2727 CAMINO DEL RIO SOUTH  
SUITE 315  
SAN DIEGO, CALIFORNIA 92108  
TELEPHONE (619) 563-8000  
Fax: (619) 563-7878

July 18, 2003

Timothy J. Canty, President  
Emvest Incorporated, (Manager)  
Emvest Mortgage Fund, LLC  
591 Camino De La Reina, Suite 928  
San Diego, CA 92108

EXH. 182 DATE 7.28.05  
WITNESS LEVY  
T. Rampone, CSR 6511

*278*

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will perform the following services:

1. We will compile, from information you provide, the annual and interim (June 30, 2003) balance sheets and the related statements of income, members equity, and cash flows of Emvest Mortgage Fund, LLC (A California Limited Liability Company) for the year ended December 31, 2003, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. We will not audit or review such financial statements. Consequently, we will not be able to express an opinion or any other form of assurance on the financial statements and will, therefore, disclaim an opinion on them. Moreover, since an audit engagement cannot be relied upon to disclose errors or irregularities or illegal acts, there is little likelihood of their discovery when, as in this case, no audit has been undertaken. Our report is presently expected to read as follows:

We have compiled the accompanying balance sheet of Emvest Mortgage Fund LLC, A Limited Liability Company as of December 31, 2003, and the related statements of income, members' equity, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

If management elects to omit substantially all disclosures from the financial statements, we will include an additional paragraph that will read as follows:

Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Timothy J. Canty, President  
Emvest Incorporated, (Manager)  
Emvest Mortgage Fund, LLC  
July 18, 2003  
Page 2 of 2

Because of Kornfeld and Levy, CPAs lack of independence with Emvest, Incorporated and Emvest Mortgage Fund, LLC, our report will include a statement that reads as follows:

We are not independent with respect to Emvest Mortgage Fund LLC.

If, for any reason, we are unable to complete the compilation of your financial statements, we will not issue a report on such statements as a result of this engagement.

2. We will assist your bookkeeper in providing us with the information necessary to prepare a working trial balance from which financial statements can be compiled.
3. We will also prepare the federal and state partnership income tax returns for the year ended December 31, 2003.

Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations, that may exist. In addition, we have no responsibility to identify and communicate significant deficiencies or material weakness in your internal control structure as part of this engagement.

You have further agreed not to use our financial statements for solicitation purpose for Emvest Mortgage Fund, LLC.

Our fee will be based on the number of hours spent and the staff positions of the individuals assigned based on our standard hourly rate.

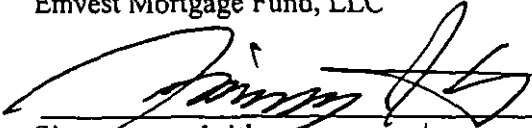
We shall be pleased to discuss this letter with you at any time.

If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us.

Very truly yours,

  
KORNFELD AND LEVY  
CERTIFIED PUBLIC ACCOUNTANTS

Acknowledged:  
Emvest Incorporated  
Emvest Mortgage Fund, LLC

  
Signature and title

9/25/03  
Date



# Kornfeld and Levy, Certified Public Accountants

FAX Transmission

From: Gary Kornfeld Date: August 16, 2003  
To: Lyle Brock Time: 3:28:56 PM  
Company: Emvest Mortgage Fund LLC FAX #: 619-497-1760

Number of pages including cover 1

Dear Lyle:

We reviewed the member distributions during the 1<sup>st</sup> six months of 2003. It appears that when an investor leaves the Fund, you distribute their original investment in full. Our determination is that this is an overstatement of what is due the partner. Therefore, the investors which have left the fund will have received distributions in excess of their actual capital accounts.

A partner's capital is affected by their share of allocated syndication costs, actual profit and loss of the fund, and their monthly distributions. Since inception you have been paying a 12.5% distribution based on their original capital contributed. However, this has been in excess of the actual earnings of the fund. When you take that into consideration along with the allocation of syndication costs, an investor would actually be entitled to less than what their original capital consisted of.

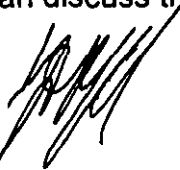
One way to look at it, is that when you payout an investor, they would be entitled to receive their share of the net book assets (Cash+Trust Deeds+receivables-loans and payables).

I think you need to address the calculation as to how investors are paid out when leaving the fund before making any further distributions. We also need to discuss what to do with the over distributions to those investors which have already left the fund.

Please call me so we can discuss this matter further.

Sincerely,

Gary Kornfeld, Partner



EXH. 197 DATE 7-28-05  
WITNESS LEVY  
T. Rampone, CSR 6511

8 pg

VOICE: 619-563-8000 FAX: 619-563-7878

2727 Camino Del Rio South, Suite 315, San Diego, CA 92108

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
813	8/16 3:32PM	0'34"	6194971760	Send.....	1 / 1	EC144	Completed.....

Total 0'34" Pages Sent: 1 Pages Printed: 0

**Kornfeld and Levy, Certified Public Accountants**

FAX Transmission

From: Gary Kornfeld Date: August 16, 2003  
 To: Lyle Brock Time: 3:28:56 PM  
 Company: Ervest Mortgage Fund LLC FAX #: 619-497-1760

Number of pages including cover: 1

Dear Lyle:


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One way to look at it, is that when you payout an investor, they would be entitled to receive their share of the net book assets (Cash+Trust Deeds+receivables-loans and payables).

I think you need to address the calculation as to how investors are paid out when leaving the fund before making any further distributions. We also need to discuss what to do with the over distributions to those investors which have already left the fund.

Please call me so we can discuss this matter further.

Sincerely,  
 Gary Kornfeld, Partner 

VOICE: 619-563-8000 FAX: 619-563-7878

2727 Camino Del Rio South, Suite 315, San Diego, CA 92108

06/07/03

## EMVEST MORTGAGE FUND LLC

## Balance Sheet

As of June 30, 2003

	Jun 30, 03
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
EMVEST MTG FUND	2,520,361.37
Total Checking/Savings	2,520,361.37
Other Current Assets	
Employee Advance	4,500.00
Other Receivable	36,367.86
Total Other Current Assets	40,867.86
Total Current Assets	2,561,229.23
Other Assets	
Bond - CD	10,000.00
Heritage Loan	29,000.00
TRUST DEED PRINCIPAL	4,023,114.35
TRUST DEED PRINCIPAL (Contra)	-24,376.71
Total Other Assets	4,037,737.64
<b>TOTAL ASSETS</b>	<b>6,598,966.87</b>
<b>LIABILITIES &amp; EQUITY</b>	
Equity	
Distributions	-124,573.92
LOAN	200,000.00
Syndication Costs	-231,841.96
8998 - Retained Earnings	97,701.03
9999 - Partners Capital	
0010 - PARTNER 01-R.A.FAM. INV	50,000.00
0020 - PARTNER 02-WILSON TRUST	172,812.50
0030 - PARTNER 03-SHOUREK	58,000.00
0040 - PARTNER 04-RAYNOHA	38,187.50
0050 - PARTNER 05-BARAK	52,000.00
0060 - PARTNER 06-MAHY	100,000.00
0070 - PARTNER 07-BREWER	193,750.00
0080 - PARTNER 08-ANDERSEN	50,000.00
0090 - PARTNER 09-La BORE	10,000.00
0100 - PARTNER 10-L.W.BURTON	10,000.00
0110 - PARTNER 11-MARSHALL	40,000.00
0120 - PARTNER 12-McLENNAN	51,828.13
0130 - PARTNER 13-B.BLACK	45,000.00
0140 - PARTNER 14-G.HANDOVA	10,000.00
0150 - PARTNER 15-HELMBRECHT	38,015.63
0160 - PARTNER 16-SICKELS	10,000.00
0170 - PARTNER 17-TEEL	119,000.00
0180 - PARTNER 18-SHOOK	10,000.00
0190 - PARTNER 19-GROUNDS	28,375.00
0210 - PARTNER 21-ENTWISLE	268,000.00
0220 - PARTNER 22-C.BRADLEY	3,203.13
0230 - PARTNER 23-THUNDERBOLT	30,000.00
0240 - PARTNER 24-WITTFOHT	590,000.00
0250 - PARTNER 25-FREDERICK	10,000.00
0260 - PARTNER 26-WESELY	100,000.00
0270 - PARTNER 27-HALVARSON	10,000.00
0280 - PARTNER 28-B.BLACK	30,000.00
0290 - PARTNER 29-A.GREY	10,000.00
0300 - PARTNER 30-F.PEREZ	17,000.00
0310 - PARTNER 31-FUERY	50,000.00
0320 - PARTNER 32-Wm.STUART	100,000.00
0330 - PARTNER 33-R.BAGLEY	10,000.00
0340 - PARTNER 34-I.CITONE	50,000.00
0350 - PARTNER 35-J.HARRIS-MOTTA	20,000.00
0360 - PARTNER 36-M.A.DE JESUS	10,000.00
0370 - PARTNER 37-FBO-L.MANNING	31,000.00
0380 - PARTNER 38-J.MOSSBERG	26,000.00

## EMVEST MORTGAGE FUND LLC

## Balance Sheet

As of June 30, 2003

08/07/03

	Jun 30, 03
0390 · PARTNER 39-ALBRECHT/NELSON	15,000.00
0400 · PARTNER 40-R.TAYLOR	40,000.00
0410 · PARTNER 41-J.C.BOYD	90,000.00
0420 · PARTNER 42-J.FRANKEL	250,000.00
0430 · PARTNER 43-J.WEST	20,000.00
0440 · PARTNER 44-M.STRAFELLO	10,000.00
0450 · PARTNER 45-D.BLUMENBERG	10,000.00
0460 · PARTNER 46-E.M.QUATTRO	10,000.00
0470 · PARTNER 47-L.CHERNOFF	30,000.00
0480 · PARTNER 48-J.W.BARRON	77,000.00
0490 · PARTNER 49-T.E.WILSON	10,000.00
0500 · PARTNER 50-J.J.DOBAS	10,000.00
0510 · PARTNER 51-I.V.HOOVER	10,000.00
0520 · PARTNER 52-T.P.EICKNER	38,125.00
0530 · PARTNER 53-F.M.DAYRIT	40,000.00
0540 · PARTNER 54-W.COVINGTON	36,000.00
0550 · PARTNER 55-J.W.RAYNOHA	20,000.00
0560 · PARTNER 56-A.M.MAJUL	10,000.00
0570 · PARTNER 57-S.EICH	226,000.00
0580 · PARTNER 58-W.A.GREENE	20,000.00
0590 · PARTNER 59-TAOL CORP	4,000.00
0600 · PARTNER 60-DE MARCO	60,000.00
0610 · PARTNER 61-S.N.BUCKLEY	12,000.00
0620 · PARTNER 62-CARO INVESTMENT CO..	23,000.00
0630 · PARTNER 63-J.L.GOMEZ	30,154.62
0640 · PARTNER 64-G.F.OYSTER	70,000.00
0650 · PARTNER 65-J.ADAMS	15,000.00
0660 · PARTNER 66-R.CHERNISH	10,000.00
0670 · PARTNER 67-R.WHITE	10,000.00
0680 · PARTNER 68-H.A.PENN	10,000.00
0690 · PARTNER 69-A.SHOWAH	20,000.00
0700 · PARTNER 70-J.MONROE JONES	60,000.00
0710 · PARTNER 71-J.B.MACARTHUR	37,000.00
0730 · PARTNER 73-S.SICKLER	39,000.00
0740 · PARTNER 74-J.KESSLER	100,000.00
0750 · PARTNER 75-L.MICCO	45,000.00
0770 · PARTNER 77-A.COVINGTON	30,000.00
0780 · PARTNER 78-I.TAPP	30,000.00
0790 · PARTNER 79-R.FIELDS	25,000.00
0800 · PARTNER 80-Y.K.WONG	10,000.00
0810 · PARTNER 81-G.MATTINSON	20,000.00
0820 · PARTNER 82-T.A.COVINGTON	28,000.00
0830 · PARTNER 83-P.A.BORN	10,000.00
0840 · PARTNER 84-A.A.ZAABALAWI	90,000.00
0850 · PARTNER 85-A.CASTILLO	50,000.00
0860 · PARTNER 86-V.GONZALEZ	50,000.00
0870 · PARTNER 87-V.L.RALEIGH	50,000.00
0880 · PARTNER 88-F.REDDING	10,000.00
0890 · PARTNER 89-R.P.STACK	25,000.00
0900 · PARTNER 90-R.L.PENCE	15,000.00
0910 · PARTNER 91-W.P.KOLB	30,000.00
0920 · PARTNER 92-J.D.S.M. LTD - KENNY	100,000.00
0930 · PARTNER 93-N.L.BENNETT	20,000.00
0940 · PARTNER 94-G.F.BANKS	80,000.00
0950 · PARTNER 95-R.P.METZGER	20,000.00
0960 · PARTNER 96-D.PARADOWSKI	20,000.00
0970 · PARTNER 97-CATANIA/PARADOWSKI	5,000.00
0980 · PARTNER 98-C.W.LANG	25,000.00
0990 · PARTNER 99-A.VENTURES	10,000.00
1000 · PARTNER 100-C.LANDON	100,000.00
1010 · PARTNER 101-W.C.BRISCOE	50,000.00
1020 · PARTNER 102-A.RUSSO	10,000.00
1030 · PARTNER 103-P.WESELY, JR	20,000.00
1040 · PARTNER 104-T.F.FORD	100,000.00
3060 · PARTNER 306- D.HALE	18,468.75
3070 · PARTNER 307-D.C.GROUNDS	5,156.25

08/07/03

**INVEST MORTGAGE FUND LLC**

**Balance Sheet**

As of June 30, 2003

	<u>Jun 30, 03</u>
3120 · PARTNER 312-W.THRAILKILL	54,662.50
3130 · PARTNER 313- PUPEK, SR.	18,187.50
3160 · PARTNER 316-S.BRADLEY	45,468.75
3180 · PARTNER 318-DE ANDA	21,214.06
3190 · PARTNER 319-M.A.THRAILKILL	23,395.94
3200 · PARTNER 320-R.JUAREZ	176,406.25
3210 · PARTNER 321-M.FUKUSHIMA	9,375.00
3230 · PARTNER 323- D.G.CROCKETT	46,875.00
3250 · PARTNER 325-A.LERNER	23,437.50
3260 · PARTNER 326-ZAGARA CARLSBAD	187,500.00
3270 · PARTNER 327-L.MANNING	28,125.00
3280 · PARTNER 328-C.MAHLER	104,062.50
3290 · PARTNER 329 - VADEE LEE	117,187.50
3300 · PARTNER 330-D.ROSEWARNE	36,562.50
3310 · PARTNER 331-P.LEFF	61,822.92
3360 · PARTNER 336-K.E.ANDERSON	18,750.00
3370 · PARTNER 337-D.RANGEL	10,000.00
3380 · PARTNER 338-A.ORMSBY	14,062.50
3400 · PARTNER 340-WILSON & CORBIN	27,281.25
3450 · PARTNER 345-D.L.HOWELL	5,468.75
3460 · PARTNER 346-L.NEGRETTE	47,734.38
3470 · PARTNER 347-WM.L.FOSTER	50,000.00
3520 · PARTNER 352-T.DURICK	9,093.75
3620 · PARTNER 362-J.BLAINE	57,500.00
3630 · PARTNER 363-H.MAHLER	136,406.25
3660 · PARTNER 366-B.MIKITA	46,875.00
3700 · PARTNER 370-G.HELBRECHT	4,687.50
3710 · PARTNER 371-ZAGARA CA,LLC	325,312.50
3720 · PARTNER 372-R.E.ORMSBY	9,375.00
3730 · PARTNER 373-M.SMITH	9,184.00
3740 · PARTNER 374-A.JEFFREY	14,375.00
3760 · PARTNER 376-J.F.McGREW	43,015.63
3770 · PARTNER 377-K.FITZGERALD	14,375.00
<b>Total 9999 · Partners Capital</b>	<b>6,821,855.94</b>
<b>Net Income</b>	<b>-164,174.22</b>
<b>Total Equity</b>	<b>6,598,966.87</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>6,598,966.87</b>

## EMVEST MORTGAGE FUND LLC

## Profit &amp; Loss

January through June 2003

Jan - Jun 03

Ordinary Income/Expense	
Income	
BUY IN DISCOUNT	132,954.97
INTEREST INCOME	178,639.59
REBATE	-29,360.00
<b>Total Income</b>	<b>282,234.56</b>
Expense	
Advertising	21,078.34
APPLICATION FEE	2,500.00
COMMISSION	-768.00
Commission Expense	984.00
INSPECTION	0.00
Insurance Workmans Comp	539.87
LOAN FEES	0.00
NET WAGES	97,158.30
Outside Services	6,433.00
Payroll Taxes Expense	9,343.69
Recording fees	119.00
SERVICE FEE	1,706.96
SET-UP	0.00
6120 · Bank Service Charges	133.29
6160 · Dues and Subscriptions	125.00
6200 · Interest Expense	
DIST. PARTNER- 92- JDSM LTD	547.94
DIST. PARTNER-333-S.P.JEVREMOV	1,416.02
DIST. PARTNER-363-H.MAHLER	2,841.80
DIST. PARTNER-59-A.COVINGTON	138.70
001 · DIST. PARTNER-01-R.A.FAMILY	2,604.15
002 · DIST. PARTNER-02-WILSON	7,579.76
003 · DIST. PARTNER-03-SHOURE	3,020.85
004 · DIST. PARTNER-04-RAYNOH/UNION	1,988.35
005 · DIST. PARTNER-05-BARAK	2,708.35
006 · DIST. PARTNER-06-MAHY	5,170.57
007 · DIST. PARTNER-07-BREWER	10,091.15
008 · DIST. PARTNER-08-ANDERS	2,504.15
009 · DIST. PARTNER-09-LABORE	520.85
010 · DIST. PARTNER-10-BURTON	520.85
011 · DIST. PARTNER-11 MARSHALL	1,516.54
012 · DIST. PARTNER-12-A.McLENNAN	2,699.40
013 · DIST. PARTNER-13-1st/B.BLACK	2,343.75
014 · DIST. PARTNER-14-HANDOV	520.85
015 · DIST. PARTNER-15-HELMBRECHT	1,980.00
016 · DIST. PARTNER-16-SICKELS	520.85
017 · DIST. PARTNER-17-TEEL	5,649.61
018 · DIST. PARTNER-18-SHOOK	520.80
019 · DIST. PARTNER-19-GROUND	1,269.55
021 · DIST. PARTNER-21-ENTWISLE	14,902.87
022 · DIST. PARTNER-22-C.BRADLEY	3,779.86
023 · DIST. PARTNER-23-BARAK/THUNDER	1,562.50
024 · DIST. PARTNER-24-WITFOHT	23,833.20
025 · DIST. PARTNER-25-FREDERICK	520.85
026 · DIST. PARTNER-26-WESELY	3,125.00
027 · DIST. PARTNER-27-HALVARSON	520.80
028 · DIST. PARTNER-28-B.BLACK	1,562.50
029 · DIST. PARTNER-29-H.GREY	520.85
030 · DIST. PARTNER-30-F.PEREZ	745.58
031 · DIST. PARTNER-31-V.FUERY	2,604.15
032 · DIST. PARTNER-32-W.R.STUART	4,194.35
033 · DIST. PARTNER-33-R.A.BAGLEY	520.85
034 · DIST. PARTNER-34-I.CITONE	1,685.78
035 · DIST. PARTNER-35-J.S.HARRIS-MOT	1,041.65
036 · DIST. PARTNER-36-M.DE JESUS	520.85
037 · DIST. PARTNER-37-L.MANNING	1,549.53
038 · DIST. PARTNER-38-J.MOSSBERG	1,354.15
039 · DIST. PARTNER-39-ALBRECHT/NELSO	781.25

## EMVEST MORTGAGE FUND LLC

## Profit &amp; Loss

January through June 2003

	Jan - Jun 03
040 · DIST. PARTNER-40-R.TAYLOR	1,687.21
041 · DIST. PARTNER-41-J.C.BOYD	3,672.67
042 · DIST. PARTNER-42-J. FRANKEL	8,502.56
043 · DIST. PARTNER-43-J.WEST	1,041.65
044 · DIST. PARTNER-44-M.STRAFELLO	520.85
045 · DIST. PARTNER-45-D.BLUMENBERG	520.85
046 · DIST. PARTNER-46-E.M.QUATTRO	520.85
047 · DIST. PARTNER-47-L.CHERNOFF	967.49
048 · DIST. PARTNER-48-J.W.BARRON	4,010.40
049 · DIST. PARTNER-49-T.E.WILSON	520.85
050 · DIST. PARTNER-50-J.J.DOBIAŠ	464.62
051 · DIST. PARTNER-51-I.V.HOOVER	454.35
052 · DIST. PARTNER-52-EICKNER	1,943.17
053 · DIST. PARTNER-53-F.M.DAYRIT	1,016.84
054 · DIST. PARTNER-54-W.A.COVINGTON	1,721.91
055 · DIST. PARTNER-55-J.W.RAYNOHA	949.75
056 · DIST. PARTNER-56-A.M.MAJUL	471.47
057 · DIST. PARTNER-57-S.EICH	8,105.75
058 · DIST. PARTNER-58-W.A.GREENE	936.05
059 · DIST. PARTNER-59-TAOL CORP	41.67
060 · DIST. PARTNER-60-DE MARCO	1,654.10
061 · DIST. PARTNER-61-S.BUCKLEY	528.76
062 · DIST. PARTNER-62-S.MYERS	608.74
063 · DIST. PARTNER-63-J.L.GOMEZ	1,246.58
064 · DIST. PARTNER-64-G.OYSTER	2,762.85
065 · DIST. PARTNER-65-J.ADAMS	581.76
066 · DIST. PARTNER-66-R.G.CHERNISH	363.88
067 · DIST. PARTNER-67-R.C.WHITE	336.48
068 · DIST. PARTNER-68-H.A.PENN	336.48
069 · DIST. PARTNER-69-A.SHOWAH	652.38
070 · DIST. PARTNER-70-J.MONROE JONE	963.47
071 · DIST. PARTNER-71-J.B.MACCARTHU	1,181.60
073 · DIST. PARTNER-73- S.SICKLER	1,052.91
074 · DIST. PARTNER-74-J.KESSLER	2,699.77
075 · DIST. PARTNER-75-L.MICCIO	866.43
076 · DIST. PARTNER-76-EICH/PENSCO	249.31
077 · DIST. PARTNER-77-W.COVINGTON	655.82
078 · DIST. PARTNER-78-I.TAPP	538.52
079 · DIST. PARTNER-79- R.FIELDS	423.09
080 · DIST. PARTNER-80-Y.K.WONG	169.23
081 · DIST. PARTNER-81-G.E.MATTINSON	338.46
082 · DIST. PARTNER-82-T.A.COVINGTON	413.29
083 · DIST. PARTNER-83-P.A.BORN	158.96
084 · DIST. PARTNER-84-A.A.ZAABALAW	1,430.65
085 · DIST. PARTNER-85-A.CASTILLO	931.77
086 · DIST. PARTNER-86- V.GONZALEZ	726.30
087 · DIST. PARTNER-87-V.RALEIGH	520.83
088 · DIST. PARTNER-88- F.REDDING	104.17
089 · DIST. PARTNER-89-R.P.STACK	222.60
090 · DIST. PARTNER-90-R.L.PENCE	113.01
091 · DIST. PARTNER-91-WM.KOLB	164.38
093 · DIST. PARTNER-93-N.L.BENNETT	61.64
094 · DIST. PARTNER-94-G.F.BANKS	164.38
095 · DIST. PARTNER-95-R.P.METZGER	20.54
306 · DIST. PARTNER-306-D&L HALE	961.90
307 · DIST. PARTNER-307-BK/D.GROUNDS	268.55
311 · DIST. PARTNER-311-T&M WILSON	1,420.89
312 · DIST. PARTNER-312-THRAILKILL	3,759.85
314 · DIST. PARTNER-314-PUPEK, JR	947.30
316 · DIST. PARTNER-316-S.BRADLEY	2,368.15
317 · DIST. PARTNER-317-CARL BRADLEY	0.00
318 · DIST. PARTNER-318-S.DE ANDA	942.68
319 · DIST. PARTNER-319-1st/M.THRAILK	880.85
320 · DIST. PARTNER-320-R.JUAREZ	7,877.33
321 · DIST. PARTNER-321-M.FUKUSHIMA	488.30
323 · DIST. PARTNER-323-D.G.CROCKETT	2,441.40

## EMVEST MORTGAGE FUND LLC

## Profit &amp; Loss

January through June 2003

	Jan - Jun 03
324 · DIST. PARTNER-324-McGREW-REGION	732.40
325 · DIST. PARTNER-325-A.LERNER	1,220.70
326 · DIST. PARTNER-326-ZA-CARLSBAD L	9,765.65
327 · DIST. PARTNER-327-L.MANNING	1,464.85
328 · DIST. PARTNER-328-C.MAHLER	732.40
329 · DIST. PARTNER-329-V.LEE	6,103.50
330 · DIST. PARTNER-330-D.ROSEWARNE	1,904.30
331 · DIST. PARTNER-331-P.J.LEFF	3,132.93
336 · DIST. PARTNER-336-K.ANDERSON	976.55
337 · DIST. PARTNER-337-D.T.RANGEL	495.14
338 · DIST. PARTNER-338-AUDREY ORMSBY	732.40
340 · DIST. PARTNER-340-W&CORBIN	1,420.90
345 · DIST. PARTNER-345-D.HOWELL	743.69
346 · DIST. PARTNER-346-L.NEGRETTE	1,667.11
347 · DIST. PARTNER-347-WM.FOSTER	1,630.98
352 · DIST. PARTNER-352-T.DURICK	473.65
362 · DIST. PARTNER-362-J.BLAINE	2,499.94
363 · DIST. PARTNER-363-HUGO MAHLER	4,262.70
366 · DIST. PARTNER-366-B.J.MIKITA	2,441.40
370 · DIST. PARTNER-370-G.HELMBRECHT	244.15
371 · DIST. PARTNER-371-ZAGARA LLC	16,943.35
372 · DIST. PARTNER-372-R.ORMSBY	488.30
373 · DIST. PARTNER- 373-M.SMITH	244.80
374 · DIST. PARTNER-374-JEFFREY	748.70
375 · DIST. PARTNER-375-G.KENNEDY	125.21
376 · DIST. PARTNER-376-J.F.McGREW	1,892.21
377 · DIST. PARTNER-377-K.FITZGERALD	488.30
<b>Total 6200 · Interest Expense</b>	<b>271,349.52</b>
6220 · Loan Interest	4,829.31
6230 · Licenses and Permits	250.00
6250 · Postage and Delivery	519.23
6260 · Printing and Reproduction	6,915.84
6270 · Professional Fees	
6280 · Legal Fees	12,969.16
6560 · Accounting	7,514.64
<b>Total 6270 · Professional Fees</b>	<b>20,483.80</b>
6350 · Travel & Ent	
6360 · Entertainment	311.00
<b>Total 6350 · Travel &amp; Ent</b>	<b>311.00</b>
6550 · Management Fees	783.00
6580 · Supplies	
6600 · Office	645.49
<b>Total 6580 · Supplies</b>	<b>645.49</b>
6610 · Taxes	
6650 · State	800.00
6610 · Taxes - Other	168.14
<b>Total 6610 · Taxes</b>	<b>968.14</b>
<b>Total Expense</b>	<b>446,408.78</b>
<b>Net Ordinary Income</b>	<b>-164,174.22</b>
<b>Net Income</b>	<b>-164,174.22</b>



**EMVEST**  
INCORPORATED



A CALIFORNIA  
CORPORATION

March 1, 2004

To The Members  
Emvest Mortgage Fund, LLC  
591 Camino De La Reina,, Suite 103  
San Diego, CA 92108

Dear Members:

We have just completed our 2003 year end accounting for submission to the California Department of Corporations in compliance with reporting requirements of our securities permit. Please find your 2003 K-1 enclosed in addition to the usual distribution check. After review, the Department will post our financials on their Cal-EASI web site. This should happen within a month.

I would like to highlight a few of our accomplishments of 2003:

Emvest Mortgage Fund funded 290 loans for over \$25,000,000.00

Total fund assets are over \$13,500,000.00.

The fund is continuing to generate returns above 12%.

There were only four loans in default at the end of the year (three have cured or paid off since the report date).

Our management team is very pleased that we have continued to improve our operation as we grow. Following the "old fashioned" rules of lending on significant equity on marketable property to people with demonstrated income is paying off. Our conservative lending guidelines have given our loan portfolio a credit performance far better than the industry average for the non-prime lending sector (even beating some prime sector lenders).

We take pride in the fact that we can provide an outstanding return to our investors while giving over 250 families a second chance at home ownership in their times of need. We offer our congratulations to you on doing good while doing well.

Sincerely,

Timothy J Canty  
President, Emvest Incorporated

EXHIBIT 8 PAGE 64



**PROOF OF SERVICE**

1 I am over the age of 18 years and not a party to this action. My business address is:

2  
3  U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th  
Floor, Los Angeles, California 90036-3648

4 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

5 On September 20, 2005, I served the document entitled **SUPPLEMENTAL DECLARATION**  
6 **OF SUSAN F. HANNAN IN SUPPORT OF SECURITIES AND EXCHANGE**  
7 **COMMISSION'S REPLY TO DEFENDANTS' AND UNIFIED MORTGAGE SERVICE,**  
**INC.'S RESPONSES TO THIRD VERIFIED REPORT OF RECEIVER** upon the parties to  
this action addressed as stated on the attached service list:

8  **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and  
9 mailing today following ordinary business practices. I am readily familiar with this  
agency's practice for collection and processing of correspondence for mailing; such  
10 correspondence would be deposited with the U.S. Postal Service on the same day in the  
ordinary course of business.

11  **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I  
12 personally deposited with the U.S. Postal Service. Each such envelope was  
deposited with the U.S. Postal Service at Los Angeles, California, with first class  
13 postage thereon fully prepaid.

14  **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly  
maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles,  
15 California, with Express Mail postage paid.

16  **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of  
the addressee.

17  **FEDERAL EXPRESS BY AGREEMENT OF ALL PARTIES:** By placing in sealed  
18 envelope(s) designated by Federal Express with delivery fees paid or provided for, which  
I deposited in a facility regularly maintained by Federal Express or delivered to a Federal  
19 Express courier, at Los Angeles, California.

20  **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the  
electronic mail address as stated on the attached service list.

21  **FAX:** By transmitting the document by facsimile transmission. The transmission was  
22 reported as complete and without error.

23  **(Federal)** I declare that I am employed in the office of a member of the bar of this Court,  
at whose direction the service was made. I declare under penalty of perjury that the  
24 foregoing is true and correct.

25 Date: September 20, 2005

  
26 MAGNOLIA M. MARCELO

