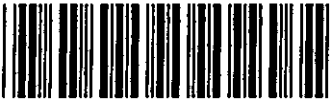


USDC SCAN INDEX SHEET



CAG 12/7/04 12:36
3:04-CV-02295 SEC V. EMVEST MORTGAGE FUND
33
ANS.

1 ROBERT S. BREWER, JR., ESQ. (SBN 65294)
2 ROBERT A. COCCHIA, ESQ. (SBN 172315)
3 B. LUKE PISTORIUS, ESQ. (SBN 190690)
4 JOSEPH N. CASAS, ESQ. (SBN 225800)
5 MCKENNA LONG & ALDRIDGE LLP
6 Suite 3300, Symphony Towers
7 750 B Street
8 San Diego, CA 92101
9 Telephone: (619) 595-5400
10 Facsimile: (619) 595-5450

11 Attorneys for Defendants EMVEST MORTGAGE FUND,
12 LLC; EMVEST, INC.; and MILON LYLE BROCK

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

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

22 Defendants.

23 CASE NO. 04 CV 2295 DMS (LSP)

24 ANSWER OF DEFENDANTS EMVEST
25 MORTGAGE FUND, LLC; EMVEST, INC.;
26 AND MILON LYLE BROCK

27 EMVEST MORTGAGE FUND, LLC ("the Fund"), EMVEST, INC., and MILON LYLE
28 BROCK (collectively, "Defendants") hereby answer the Complaint of Plaintiff, SECURITIES
AND EXCHANGE COMMISSION ("SEC"). Defendants admit, deny, and allege as follows:

1. Admit.

2. Defendants admit that they reside and conduct business in this district and that
venue is proper in this district. Defendants deny the remaining material allegations in this
paragraph.

3. Deny.

FILED
04 DEC -6 PM 1:54
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY
Palmer

33
- 1 -

04 CV 2295

ORIGINAL

1 4. Defendants admit that they represented to investors that investors' capital would
2 be used to make and purchase loans secured by real property. Defendants deny the remaining
3 material allegations in this paragraph.

4 5. Defendants admit that they represented to investors that the Fund would pay
5 investors a 12% return on their "unreturned original invested capital." Defendants deny the
6 remaining material allegations in this paragraph.

7 6. Defendants admit that they represented that the Fund's investment objectives
8 included preserving investors' capital. Defendants deny the SEC's characterization of this
9 statement as a "misrepresentation." Defendants deny the remaining material allegations in this
10 paragraph.

11 7. Deny.

12 8. Admit.

13 9. Defendants admit that the Fund is a California limited liability company formed in
14 or about February 2002, with offices in San Diego, for the purpose of making and purchasing
15 loans secured by real property. Defendants further admit that from approximately March 2002
16 through August 2004, the Fund conducted a \$50 million securities offering at \$1,000 per share,
17 and that as of August 31, 2004, the Fund had raised approximately \$18 million from 270
18 investors. Defendants admit that they represented to investors that the Fund would pay investors
19 a 12% return on their "unreturned original invested capital." Defendants deny the SEC's
20 characterization of this statement as "promising a 12% return per annum." Defendants deny the
21 remaining material allegations in this paragraph.

22 10. Admit.

23 - 11. Defendants admit that Brock controls Emvest, Inc. and the Fund, and that Brock is
24 the founder and CEO of Emerald Bay Financial, Inc. Defendants further admit that Brock's
25 daughter is president of Unified Mortgage Services, and Brock's son-in-law serves as president of
26 Emerald Bay Funding, Inc., but Defendants deny that Brock controls these entities. Additionally,
27 Defendants deny the remaining material allegations in this paragraph.

28 12. Admit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. Admit.

14. Defendants admit that the Fund utilized advertisements and a web site in order to inform the market about its securities. Defendants further admit that these advertisements disclosed that investors would receive a 12% return on their “unreturned original invested capital,” and that the Fund’s objective was to preserve investors’ capital. Defendants deny the remaining material allegations in this paragraph.

15. Defendants admit that new investor money is received into the Fund’s account and is effectively “pooled” with money used to pay all investors. Investor returns are then paid from this account. However, Defendants deny the SEC’s characterization of this activity as the Fund using new investor money to pay earlier investors, and aver that the Fund’s return on investments and income from operations sufficed to cover returns paid to investors. Defendants deny the remaining material allegations in this paragraph.

16. Deny.

17. Deny.

18. Deny.

19. Deny.

20. Defendants admit that the Fund’s Prospectus states that “affiliates of the Manager may receive loan origination, broker’s, finder’s, and/or other fees from third-parties (but not the Company) in connection with the acquisition and/or disposition of assets comprising the Company’s Loan Portfolio....” Defendants deny the remaining material allegations in this paragraph.

21. Defendants admit that they represented that investors would receive a 12% return on their “unreturned original invested capital.” However, Defendants deny the SEC’s characterization of this statement as a false and misleading representation. Defendants deny the remaining material allegations in this paragraph.

22. Defendants admit that they represented that one of the Fund’s objectives was to preserve capital contributions. However, Defendants deny the SEC’s characterization of this

1 statement as a false representation. Defendants deny the remaining material allegations in this
2 paragraph.

3 23. Deny.

4 24. Defendants admit that in a facsimile dated August 16, 2003, the Fund's then-
5 current accountants informed the Fund of their opinion that during the first six months of 2003,
6 distributions had been in excess of earnings of the Fund. Defendants deny the remaining material
7 allegations in this paragraph.

8 25. Deny.

9 26. Defendants admit that the Fund's accountants resigned, and that the SEC's actions
10 have rendered it difficult to obtain replacement accountants. Defendants deny the remaining
11 material allegations in this paragraph.

12 27. Deny.

13 28. Defendants admit that Brock offered and sold the Fund's securities through
14 prospectuses, newspaper ads, and newsletters. However, Defendants deny that Brock made
15 misrepresentations and failed to disclose material information to investors. Defendants deny the
16 remaining material allegations in this paragraph.

17 29. Deny.

18 30. Deny.

19 31. Defendants assume no admission of denial is necessary, but, in the event an
20 admission or denial is required, Defendants incorporate by reference paragraphs 1 through 30,
21 above.

22 32. Deny.

23 33. Deny.

24 34. Defendants assume no admission of denial is necessary, but, in the event an
25 admission or denial is required, Defendants incorporate by reference paragraphs 1 through 30,
26 above.

27 35. Deny.

28 36. Deny.

1 Defendants deny, generally and specifically, any remaining allegations not expressly
2 admitted.

3 **AFFIRMATIVE DEFENSES**

4 Defendants also assert the following affirmative defenses to the SEC's Complaint:

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State a Cause of Action)**

7 The SEC's Complaint fails to state facts sufficient to constitute a cause of action.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Right to Amend)**

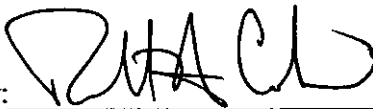
10 Defendants presently have insufficient knowledge or information as to whether they may
11 have additional, yet unasserted, affirmative defenses. Defendants therefore reserve the right to
12 assert additional affirmative defenses in the event discovery indicates it would be appropriate.

13 **WHEREFORE, Defendants pray as follows:**

- 14 1. That Plaintiff take nothing by the Complaint;
15 2. That the Complaint be dismissed with prejudice, or, alternatively, that judgment be
16 entered in favor of Defendants; and
17 3. For any other and further relief as the Court may deem just and proper.

18 Dated: December 6, 2004

MCKENNA LONG & ALDRIDGE LLP

19
20
21 By: 

22 Robert S. Brewer, Jr.
23 Robert A. Cocchia
24 B. Luke Pistorius
25 Joseph N. Casas
26 Attorneys for Defendants
27 EMVEST MORTGAGE FUND, LLC;
28 EMVEST, INC.; and MILON LYLE BROCK

SD:22131669.1

1 Securities and Exchange Commission v. Emvest Mortgage Fund, LLC, et al.
2 U.S. District Court, Southern District Case No. 04 CV 2295 DMS (LSP)

3 **PROOF OF SERVICE BY MAIL**

4 I am employed in the County of San Diego, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 750 B Street, Suite 3300, San Diego,
6 California, 92101.

7 On December 6, 2004, I served the following document described as:

- 8
- 9 • **ANSWER OF DEFENDANTS EMVEST MORTGAGE FUND, LLC;
10 EMVEST, INC.; AND MILON LYLE BROCK**

11 by placing true copies thereof enclosed in sealed envelopes addressed to the interested parties in
12 this action as follows:

13

14 <u>Attorneys for Plaintiff SECURITIES AND</u> 15 <u>EXCHANGE COMMISSION</u>	
---	--

16 Molly M. White, Esq.
17 Securities and Exchange Commission
18 5670 Wilshire Boulevard, 11th Floor
19 Los Angeles, CA 90036
20 Tel.: (323) 965-3998
21 Fax (323) 965-3908

22 [✓] BY U.S. MAIL. I caused each such envelope to be deposited in the mail at San Diego,
23 California. Each envelope was mailed with postage thereon fully prepaid.

24 I am readily familiar with the firm's procedures for mail collection and processing. It is
25 deposited with U.S. Postal Service on that same day in the ordinary course of business. I am
26 aware that on motion of party served, service is presumed invalid if postal cancellation date or
27 postage meter date is more than 1 day after date of deposit for mailing in affidavit.

28 I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct and that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

Executed on December 6, 2004, at San Diego, California.

29 
30 Rosalinda De Luca