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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

CASE NO. 04cv2295 DMS (POR)

**ORDER RE: RECEIVER'S
FIFTEENTH REPORT**

On January 23, 2009, and pursuant to Court Order, the Receiver filed his Fifteenth Verified Report ("Report"). (Doc. 444.) The Securities and Exchange Commission ("Commission") filed a response in which it raised no objections, offering a brief explanation of its position. (Doc. 447.) In its last Order regarding the Receiver's Fourteenth Verified Report, this Court ordered that it would address all issues presented by the Report on the briefs and without oral argument. (Doc. 439, at 3.) Pursuant to Local Rule 66.1, a receiver's report must include (1) a summary of Receiver's operations; (2) an inventory of receivership assets and their appraised value; (3) a schedule of all receipts and disbursements; (4) a list of all creditors, their addresses, and claimed amounts; and (5) a petition for instructions including a recommendation as to whether the receivership should be continued. The Report provides the following:

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1 *I. Summary of Receiver's Operations*

2 The Receiver reports, that despite extraordinarily difficult economic conditions, Emvest
3 Mortgage Fund, LLC's ("Fund's") operations continue in a stable manner with financial controls in
4 place and ample information provided to the public. The Receiver continues to run the Fund on a daily
5 basis with the goals of minimizing the negative effects of the downturn of the real estate market and
6 operating in a transparent and prudent manner. Due to these conditions, the Receiver could not meet
7 his goal of liquidating the Fund's assets in an orderly manner by the 12/31/08 target date. Hasty
8 liquidation of the Fund may cause much of its assets to be lost, particularly as various economic
9 recovery strategies are currently being shaped by Congress and the new President. Although the
10 Fund's entire portfolio remains for sale, the Receiver is unable to anticipate how much time will be
11 necessary to liquidate the Fund, given the high levels of uncertainty in the marketplace. (Report, ¶1.)

12 The Receiver continues monthly discretionary distributions to the investors of up to 6%
13 annually, and hardship disbursements as appropriate. He notes that, as the loan portfolio decreases
14 in size, the Fund's income also decreases. Thus, the regular 6% monthly cash payments are paid
15 partially from portfolio income and partly from a return on Member equity. The Receiver believes that
16 these disbursements are prudent due to the following circumstances: (1) Members rely upon these
17 regular monthly payments; (2) the Fund has an adequate cash reserve; and (3) the Fund is in the
18 process of being liquidated. (*Id.*, at ¶1.1.)

19 The Receiver also continues making emergency hardship refunds to Members pursuant to this
20 Court's March 2, 2005 and August 8, 2006 Orders. (*Id.*, at ¶1.2.) In addition, the Receiver reports
21 that the Fund has benefitted from his voluntary reduction of his fixed Fund management fee from
22 \$12,500 to \$9,000. The current volatility in the market has led the Receiver to spend more time
23 managing the Fund than anticipated, yielding significant savings to the Fund. (*Id.*, at ¶1.3.)

24 The Receiver reports continued progress in liquidating the Fund's loan portfolio. On
25 December 31, 2006, the portfolio principal balance was \$14,968,831. As of December 31, 2008, the
26 portfolio principal balance is \$4,041,801, plus Real Estate Owned ("REO") of \$2,322,561. Despite
27 an aggressive marketing plan, site visits and meetings with local brokers, the continued uncertainty
28 and illiquidity of the real estate market makes it difficult to find qualified buyers. (*Id.*, at ¶1.4.)

1 In the Court's "Order re: Receiver's Thirteenth Report," the Court approved a "Member's
2 Equity to Buy REO" Plan, which allows Members to use their current equity towards the purchase of
3 any of the Fund's Real Estate Owned (REO). Under this Plan, Members may consult the real estate
4 listing for the Fund's REO on the Fund's website, to determine if they are interest in any of these
5 properties. Then, any interested Member can contact the Receiver, and without the help of an outside
6 broker, may an offer to purchase a desired property. Members are allowed to use their equity instead
7 of cash to purchase the property, and must secure outside financing for the balance. Because no
8 outside real estate broker is involved, Members receive a credit equal to the "sale" real estate
9 commission, which is generally equal to 3% of the purchase price. (If a Member uses an outside
10 broker, however, they will not receive this credit.) The Receiver has the discretion to determine the
11 acceptable terms of any sale. Sales will be conducted using a normal escrow process. (*Id.*, at ¶1.5.)

12 In its "Order re: Receiver's Fourteenth Report," the Court approved a "Discounted Cash-Out"
13 Plan. Under this Plan, an amount not to exceed \$500,000 was allocated for discounted cash-outs. The
14 Plan was initially designed to run from November 1, 2008 to December 31, 2008, but the Receiver,
15 in his discretion, has extended the Plan indefinitely. Members are permitted to cash-out at 35% of
16 their current equity. Withdrawals are conducted on a "first come, first served" basis, until the
17 \$500,000 amount is reached. Partial withdrawals are not be allowed; members must cash out all of
18 their equity and sign a release to that effect. To date, two Members have cashed out their equity under
19 this Plan, in a total amount of \$13,000. (*Id.*, at ¶1.6.)

20 2. *The Fund's Financial Condition*

21 The Receiver sends periodic reports to members, and posts these reports on the Fund's website
22 (<http://emvest.info>). The Report includes the Fund's financial statements, the most recent of which
23 are included with the report as Exhibit "A." (*Id.*, at ¶2.) In 2008, the Fund recorded negative net
24 income of \$1,844,229, including bad debt expenses of \$1.9 million. The bad debt expense was taken
25 as an adjustment to more accurately reflect the Trustee's best estimate of the current market value of
26 Fund assets. (*Id.*, at ¶2.1.) For the period ending December 31, 2008, the Fund's loan portfolio is
27 valued at \$2,680,580, with REO valued at \$1,787,000. REI is real estate that was taken back the Fund
28 due to foreclosure. The amount of REO is expected to grow as more foreclosures are anticipated. (*Id.*,

1 at ¶2.2.) As of December 31, 2008, the book value of a \$10,000 original investment is \$6,491 (64.91%
2 of Members' original investment). This drop in equity is a reflection of the bad debt write-off and "an
3 extreme weakening of the market," during 2007 and 2008. Nevertheless, the Receiver represents in
4 light of the overall turmoil in real estate and sub-prime mortgage markets, the Fund is in better
5 financial condition than many others. (*Id.*, at ¶2.3.)

6 3. *Request for Instructions*

7 The Receiver requests the Court's approval for a one-time cash adjustment payment to bring
8 his (and his attorney's) fees up from 75% to 85% of the amount billed. Per Court order, streamlined
9 rules govern Receiver's filing of monthly fee statements, under which the Receiver and his attorney
10 would receive partial payment of monthly fees and 100% payment of costs. At the end of litigation,
11 the Court could then review all of the fee requests to decide the aggregate fees requested and any value
12 added. Pursuant to this Court's February 2, 2006 Order, the Receiver and his attorney receive 75%
13 of their fees and 100% of their costs. This regime was created on the assumption that the Receivership
14 would be completed by December 31, 2008. However, it is now unclear when the Receivership will
15 be concluded. Moreover, when the Receiver agreed to a voluntary reduction of fees, he could not
16 foresee the additional management time and efforts that would be required as the economy began to
17 deteriorate. In light of these conditions, the Receiver asks for this one-time cash adjustment. Such
18 an adjustment would yield a one-time payment of \$93,400 to the Receiver, and \$19,900 to his attorney.
19 Because these amounts are held in reserve and have already been expensed, the adjustment payments
20 would not effect the Fund's income, net worth, or reserves. In addition, this payment would not limit
21 the Court's ability to disgorge fees at end of litigation, if warranted. (*Id.*, at ¶3.1.)

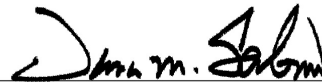
22 The Commission does not object to this one-time cash adjustment, based on its understanding
23 of the Receiver's request. As the Commission understands it, the Receiver is asking the Court to make
24 a one-time payment of 10% of the Receiver's total fees, which are part of the 25% fee reserve. Thus,
25 the 10% payment would reduce the historic 25% fee reserve to 15% of total fees. Moreover, going
26 forward, the current payment scheme will resume – the Receiver will receive 75% of fees, and 25%
27 will go in reserve. The Commission feels that this adjustment is warranted given the duration of the
28 Receivership, the its continuance beyond the target liquidation date of December 31, 2008, and market

1 conditions beyond the Receiver's control. The Commission further notes that any disgorgement or
2 reduction of the Receiver's fees can still be accomplished through the 15% historic fee reserve and the
3 25% future fee reserve. (Response, at 1.) Accordingly, the Court approves the one-time cash
4 adjustment to be paid to the Receiver and his attorney.

5 Pursuant to Civ. L. R. 66.1, the Receiver shall file, serve, and make available on the website
6 his Fifteenth Report no later than **May 15, 2009**. Comments or objections shall be filed no later than
7 **May 29, 2009**. The matter shall be calendared for **June 5, 2009**, at **1:30 p.m.**, but unless otherwise
8 ordered, the Court will address all issues on the briefs and without oral argument.

9 **IT IS SO ORDERED.**

10 DATED: February 13, 2009



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12 HON. DANA M. SABRAW
13 United States District Judge
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