

USDC SCAN INDEX SHEET



CAG 11/16/04 15:43

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

3

M.

ORIGINAL

04 NOV 16 AM 9:10

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

Calene DEPUTY

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

5 Attorneys for Plaintiff
6 Securities and Exchange Commission
7 Randall R. Lee, Regional Director
8 Sandra J. Harris, Associate Regional Director
9 Briane Nelson Mitchell, Associate Regional Director
10 5670 Wilshire Boulevard, 11th Floor
11 Los Angeles, California 90036
12 Telephone: (323) 965-3998
13 Facsimile: (323) 965-3908

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 EMVEST MORTGAGE FUND, LLC,
17 EMVEST, INC., and MILON LYLE
18 BROCK

19 Defendants.

Case No. 04 CV 2295 DMS (LSP)

PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDERS:
(1) FREEZING ASSETS;
(2) APPOINTING A TEMPORARY
RECEIVER; (3) PROHIBITING
THE DESTRUCTION OF
DOCUMENTS; (4) EXPEDITING
DISCOVERY; AND (5) REQUIRING
ACCOUNTINGS; AND AN ORDER
TO SHOW CAUSE RE
PRELIMINARY INJUNCTION AND
APPOINTMENT OF A
PERMANENT RECEIVER

CP

3

1 Plaintiff Securities and Exchange Commission (“Commission”) applies *ex*
2 *parte* for a temporary restraining order prohibiting defendants Emvest Mortgage
3 Fund, LLC (the “Fund”), Emvest, Inc., and Milon Lyle Brock from committing
4 violations of various antifraud provisions of the federal securities laws, for orders
5 freezing assets, appointing a temporary receiver, prohibiting the destruction of
6 documents, expediting discovery, and requiring accountings. In addition, the
7 Commission applies for an Order to Show Cause Re Preliminary Injunction and
8 Appointment of a Permanent Receiver. The Commission makes this Application
9 pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rules 66.1 and
10 83.3(h) of the Local Civil Rules of Practice for the United States District Court for
11 the Southern District of California.

12 The Commission alleges that defendants have committed and are continuing
13 to commit a multi-million dollar Ponzi scheme involving hundreds of California
14 investors. From March 2002 through August 2004, the Fund conducted a
15 \$50 million securities offering at \$1,000 per share, promising a 12% return per
16 year. Since 2003, the defendants have engaged in a fraudulent sale of securities in
17 the Fund, making misrepresentations about the use of investor proceeds, the source
18 of returns to investors, and the preservation of investor capital. Through its
19 fraudulent offering, as of August 31, 2004, the defendants have raised \$18 million
20 from 270 investors.

21 For the past two years, the Fund has not generated sufficient revenue to
22 support the payout of the 12% returns that it promised. Instead, the Fund has used
23 capital from new investors to pay returns and cover the Fund’s operating losses. In
24 2003 and 2004, the Fund used about \$1.5 million of investor capital to pay investor
25 returns and cover losses.

26 Defendants’ fraudulent conduct is ongoing. The defendants continue make
27 regular monthly distributions to investors without disclosing the actual source of
28 funds, giving investors the false and misleading impression that the Fund

1 investments are safe and profitable, when in fact the Fund has been losing money.
2 By engaging in this conduct, defendants have violated, and unless enjoined will
3 continue to violate, the antifraud provisions of Section 17(a) of the Securities Act
4 of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5
5 thereunder.

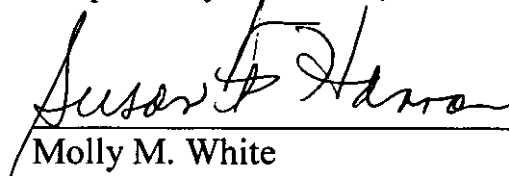
6 Accordingly, the Commission seeks *ex parte* a temporary restraining order
7 and orders (1) freezing assets; (2) appointing a temporary receiver; (3) prohibiting
8 the destruction of documents; (4) expediting discovery and (5) requiring
9 accountings. The Commission also applies for an Order to Show Cause Re
10 Preliminary Injunction and Appointment of a Permanent Receiver. The
11 Commission also seeks permanent injunctions and disgorgement with prejudgment
12 interest against all defendants and civil penalties against Emvest and Brock.

13 The Commission applies for this emergency injunctive relief on an *ex parte*
14 basis and, as set forth in the Declaration of Susan F. Hannan filed concurrently
15 herewith, the notice requirements of Rule 65(b) of the Federal Rules of Civil
16 Procedure and of Rule 83.3(h) of the Local Civil Rules of Practice for the United
17 States District Court for the Southern District of California have been satisfied.

18 This Application is based on the concurrently filed Complaint,
19 Memorandum of Points and Authorities, the Declarations of Chester Sable, Kelly
20 Bowers, and Susan F. Hannan, and the exhibits attached thereto, and any other
21 evidence and argument that the Court permits.

22
23 DATED: November 15, 2004

Respectfully submitted,

24
25 

26 Molly M. White
27 Susan F. Hannan
28 Attorneys for Plaintiff
Securities and Exchange Commission