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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
EIGHTH REPORT AND
PETITION FOR INSTRUCTIONS**

This matter comes before the Court on the Court-appointed Receiver’s Eighth Report and Petition for Instructions (the “Report”), which was filed on February 12, 2007. Both the Securities and Exchange Commission (“SEC”) and Non-Party Unified Mortgage Service, Inc. (“UMS”) have filed responses to the Report. The Court finds the matter suitable for submission without oral argument pursuant to Local Civil Rule 7.1(d)(1). Having carefully reviewed the papers submitted by the parties, the Court’s rulings are set forth as follows.

I.

BACKGROUND

The parties and investors are very familiar with the well-developed history of this litigation. In short, the SEC alleged that Defendants committed numerous acts of fraud in connection with the sale of securities in Emvest Mortgage Fund, LLC (the “Fund”). On December 3, 2004, the Court

1 granted the SEC's application for a preliminary injunction and appointed Dennis Murphy as a
2 Permanent Receiver. Following a bench trial on January 12, 2006, the Court found Defendants
3 intentionally made several material misrepresentations to investors. The Court entered a permanent
4 injunction against Defendants and ordered them to disgorge \$1.263 million plus prejudgment interest
5 to the Fund. Defendants have complied with the order.

6 In compliance with the reporting requirements for Receiverships under Civil Rule 66.1, Mr.
7 Murphy periodically provides the Court and investors with summaries of the operations of the Fund.
8 At issue is the Receiver's Eighth Report and Petition for Instructions, which covers the period from
9 October 19, 2006 to February 8, 2007.

10 **A. Summary of the Receiver's Operations and Financial Statements**

11 The Receiver has focused on running the Fund profitably and liquidating its assets in an
12 orderly manner by December 31, 2008. The entire portfolio is for sale, and updated details of each
13 loan are posted on the Fund's website. The Receiver has continued to make regular monthly
14 distributions at an annual rate of 6%, as well as hardship distributions to qualifying investors. The
15 Receiver reports that one of the Fund's loans (known as Desert Rose, aka Kim, Yu and Gramling Loan
16 E41261), serviced by UMS, has gone into default. As a result, the Receiver has replaced Lenders
17 Reconveyance, Inc. with Foreclosure Consultants, Inc. ("FCI") as Trustee for the loan for foreclosure
18 purposes. The Receiver has also advised UMS not to accept any payment from the borrower, and to
19 stop servicing the loan.

20 Monthly financial statements have been provided to investors via the Fund's website
21 (<http://emvest.info>). For 2006, the Fund netted an income of 2,790,958 (which includes the court-
22 ordered payment by Defendant Brock of \$1,317,714, and expenses for 100% of the fees billed by the
23 Receiver and his attorney although not yet actually paid). Subtracting the court-ordered payment by
24 Mr. Brock yields a net ordinary income of \$1,473,244, which is the highest net ordinary income for
25 any year since the Fund's inception. The equity in the Fund continues to grow. For example, the book
26 value of a \$10,000 investment has grown from \$8,695 at the end of 2004, to \$9,881 as of December
27 31, 2006. This, according to the Receiver, is the highest book value since the inception of the Fund.

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1 **B. Summary Claims Procedure – Analysis of Filed Claims**

2 Pursuant to Court order, the Receiver has implemented a summary claims procedure to
3 consider claims made to the Estate’s assets. Under this procedure, he has disallowed claims by the
4 following parties: (1) investors who sought return of their original investment and/or a return of 12%
5 as opposed to 6%; (2) those who had separate “side agreements” with Defendants; (3) Mr. Jack
6 Mollin’s claim for commissions; (4) investors who sought to be made whole on prior investments with
7 Defendants; and (5) miscellaneous other claims made by certain investors.

8 The Receiver denied the claims made by the first group because, under the Fund’s liquidation
9 plan, investors are not automatically entitled to a return of their original investments. Rather, the
10 amount returned depends on the amounts collected from the liquidation of assets. Regarding the
11 claims by investors with “side agreements,” the Receiver denied these claims after concluding that
12 the Fund’s representatives did not have authority to execute such agreements. The third claim
13 involves Mr. Mollin’s assertion that the Fund owes him \$7,050 in commissions. The Receiver denied
14 this claim, reasoning “no written agreement was provided to support the claim.” The fourth set of
15 claims was made by three investors who had been members of previous partnerships run by
16 Defendants. These investors entered the Fund with credit for the amounts of their ending capital
17 accounts in those partnerships. They sought to have their original investment amounts in the previous
18 partnerships returned to them. The Receiver denied such claims, indicating the Fund is unrelated to
19 the previous partnerships, and the Fund relies on amounts shown on its own records as being brought
20 into the Fund. As to the fifth and final group of claims, Mike Selman filed a claim for
21 \$1,292.22, stating he believed his capital account was understated by that amount. The Receiver
22 denied the claim, concluding the account is correct as stated. ECV Development filed a claim for
23 \$500,000. The Receiver denied this claim because the claim had been previously adjudicated by other
24 courts. Advisors Lending Group filed a claim for \$10,000 requesting a refund of interest paid by a
25 certain borrower. The Receiver found no valid basis for such a claim and denied it.

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II.

LEGAL STANDARD

“[A] district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.” *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). “It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *Id.* (citations omitted). “The basic for broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.” *Id.* “[T]he primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors. *Id.* at 1038 (citations omitted). In overseeing a receivership, a district court must “make rules which are practicable as well as equitable,” as the rights of creditors of a receivership must be balanced against “the need for expeditious administration of the receivership.” *Id.* at 1039.

III.

DISCUSSION

The Receiver seeks the Court’s instructions regarding: (1) the process by which claimants with disallowed claims may appeal the Receiver’s decision; and (2) certain disputes between the Fund and UMS and between the Fund and Emvest, Inc. In its response, UMS contends the Receiver’s transfer of the Desert Rose loan to a different servicing agent violates the prior orders of this Court.

1. Appeal Process

Investors whose claims were disallowed may appeal the Receiver’s decision by complying with the following procedures. Within 45 days of this Order being stamped “filed,” the claimants must submit their appeals in the form of noticed motions to the Magistrate Judge for review. The Receiver shall have 20 days to respond to the claimants’ appeals. No reply papers are necessary or will be accepted. Unless otherwise ordered by the Magistrate Judge, the Court will address all issues on the briefs and without oral argument. Within 10 days of this Order being stamped “filed,” the Receiver shall notify all investors whose claims were disallowed of the appeal process.

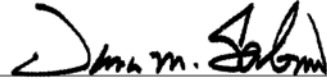
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1 delivered to Chambers. The matter shall be calendared for Friday, May 25, 2007, at 1:30 p.m., but
2 unless otherwise ordered, the Court will address all issues on the briefs and without oral argument.

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IT IS SO ORDERED.

DATED: March 5, 2007



HON. DANA M. SABRAW
United States District Judge

CC: MAGISTRATE JUDGE PORTER
ALL PARTIES