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Dennis Murphy
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 **UNITED STATES SECURITIES AND**
12 **EXCHANGE COMMISSION,**

13 Plaintiff,

14 v.

15 **EMVEST MORTGAGE FUND, LLC;**
16 **EMVEST, INC.; and MILON LYLE**
17 **BROCK,**

18 Defendants.
19

CASE NO.: 04CV2295-DMS (RBB)

JUDGE: Hon. Dana M. Sabraw

RECEIVER'S EIGHTEENTH
VERIFIED REPORT AND
PETITION FOR INSTRUCTIONS

CTRM: 10
DATE: January 29, 2010
TIME: 1:30 p.m. (No Oral Argument)

Disc. Cut-off: November 10, 2005
Motion Cut-off: November 10, 2005
Trial Date: January 3, 2006

20 **Emvest Mortgage Fund, LLC**

21 **Receiver's Eighteenth Verified Report and Petition for Instructions;**

22 **Prepared by Dennis Murphy, Permanent Receiver,**

23 **For the Period from 9/2/09 to 12/31/09**

24 This "Receiver's Eighteenth Verified Report and Petition for Instructions" is
25 filed on behalf of Emvest Mortgage Fund, LLC ("the Fund") in compliance with
26 reporting requirements for Receivers under Civil Rule 66.1 (Receivers). This
27 eighteenth report covers the period from 9/2/09 to 12/31/09.
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1 **1. Summary of Operations of Receiver:**

2 The Receiver continues to focus on making prudent business decisions in a
3 difficult financial environment while liquidating the last parts of the Fund's portfolio.
4 The overwhelming constraint is an almost total lack of liquidity in the marketplace;
5 this hinders transactions of every type and has greatly slowed the liquidation process.
6 The Receiver still believes that an achievable planning target for liquidating the Fund
7 is by the end of the first quarter of 2010.

8 As in the past, the Fund's operations continue in a stable manner, accurate and
9 timely financial reports are routinely prepared, solid financial controls are in place,
10 information is posted on the Fund's web site for all to see, and the Receiver continues
11 to run the business on a daily basis. The goal has always been to liquidate the Fund's
12 assets by the 12/31/08 target date, but that did not happen. The entire portfolio is still
13 for sale, and updated details of each loan are regularly posted on the Fund's web site
14 for all to see and evaluate. Since there is still so much uncertainty in the marketplace,
15 it is not clear how long it shall actually take to liquidate the Fund.

16 Here is a summary of operations related matters:

17 1.1 Continued Monthly Distributions to Members: The Court Order filed on
18 3/2/05 allowed the Receiver, at his discretion, to "resume making monthly
19 distributions to the Members of up to 6% annually, as long as justified by the Fund's
20 revenue". The Receiver resumed making regular monthly distributions in March 2005
21 at an annual rate of 6%, and this policy still continues.

22 As disclosed previously by the Receiver, as the loan portfolio has decreased in
23 size the Fund's income has also decreased accordingly. At this point, the regular 6%
24 monthly cash payments to Members are being made partially from portfolio income
25 and partially from a return of Member equity. Since Members have come to rely on
26 the regular monthly payments, since the Fund has an adequate cash reserve, and since
27 the Fund is in the process of being liquidated, the Receiver still believes that making
28 the regular 6% monthly cash payments is prudent under these circumstances.

1 1.2 Emergency Hardship Refunds to Members: The Receiver initially
2 received permission under the Court Order filed on 3/2/05 to “make distributions to
3 Members based on a showing of extreme hardship or emergency, not to exceed 20%
4 of those Members’ original capital”. The Court subsequently gave permission to the
5 Receiver in extreme cases to refund up to 75% of a Member’s original capital. Most
6 recently, in its Order filed on 8/8/06, the Court granted the Receiver’s request to be
7 able “to disburse up to the book value of a Member’s equity for Members of not more
8 than \$15,000 who face extreme hardship, in order to provide additional help”. As
9 appropriate, the Receiver still continues to make hardship disbursements to Members,
10 and the process continues to work as intended.

11 1.3 Further Voluntary Reduction of Receiver’s Fees: With Court approval,
12 to conserve Fund assets, the Receiver voluntarily reduced his fixed Fund management
13 fee from \$12,500.00 per month down to \$9,000.00 per month starting in January,
14 2008. With Court approval, as of January 2010 the Receiver voluntarily further
15 reduced that monthly fee down to \$5,000.00. This reduced fixed-fee arrangement has
16 yielded significant savings to the Fund. Non-operations fees continue to be excluded
17 from this fixed fee. This fee payment process continues.

18 1.4 Loan Portfolio Status: The Fund’s loan portfolio continues to be
19 negatively affected by the same weak market conditions that continue to be widely
20 reported, and fund management continues to require substantial close attention. Slow
21 but steady progress continues to be made towards liquidation of the portfolio, as
22 shown on the attached financial statements. The portfolio principal balance was
23 \$14,968,831 as of 12/31/06; it has been reduced to \$1,649,322 as of 12/31/09, plus
24 Real Estate Owned (“REO”) of \$1,050,000. The Receiver continues to market the
25 foreclosed properties aggressively. Continued uncertainty plus the overwhelming lack
26 of liquidity in the market (which means that new mortgages are more difficult to
27 obtain and old loans cannot be refinanced) means that finding qualified buyers for
28 REO has been very difficult.

1 1.5 “Member’s Equity to Buy REO” Plan: In the “Order Re: Receiver’s
2 Thirteenth Report”, the Receiver obtained Court approval for a new plan by which
3 Members could use their current equity towards the purchase of any of the Fund’s
4 Real Estate Owned (“REO”). The Receiver’s Fifteenth Report describes the details of
5 this plan. One property was successfully sold to a Member under this plan, and this
6 offer remains in effect.

7 1.6 “Discounted Cash-Out” Plan: In the “Order Re: Receiver’s Fourteenth
8 Report”, the Receiver obtained Court approval for a new plan by which Members can
9 cash-out their equity at a discount. How this discounted cash-out plan works is as
10 follows:

11 a. An amount of not to exceed \$500,000 has been allocated for discounted
12 cash-outs for a limited period after Members were notified of the program. The
13 original plan was to run the program from 11/1/08 to 12/31/08, but the program has
14 been extended indefinitely.

15 b. Members can now cash-out at 30% of the value of their current equity,
16 as shown in the most recent Financial Statements at the time of the cash-out. (As of
17 12/31/09, Members’ equity was at 38.58% of their original investment. Hence, for
18 example, a Member who had initially invested \$10,000 would currently cash-out at
19 30% of 38.58% of \$10,000, which would result in a cash-out amount of
20 approximately \$1,150 as of 12/31/09.)

21 c. Withdrawals are done on a first come first served basis, up to the total
22 \$500,000 cap.

23 d. No partial withdrawals are permitted. Each Member is required to cash
24 out completely and to sign a release.

25 The program has been extended indefinitely since it appears to provide an
26 immediate cash exit for certain investors while it does not hurt (and may possibly
27 help) those investors who remain as Members in the Fund.

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1 **2. Financial Statements:**

2 Monthly financial statements which conform to Generally Accepted
3 Accounting Principles (“GAAP”) continue to be prepared on a timely basis, and
4 continue to be posted regularly on the Fund’s web site (<http://emvest.info>). In
5 addition, these financial statements are included with the Receiver’s periodic reports
6 sent to Members. Attached are Financial Statements as of 12/31/09 for the Fund,
7 including a Balance Sheet, Income Statement, Recap of Members’ Equity, and a
8 Schedule of Accrued Interest.

9 Since the size of the Fund’s loan portfolio has been reduced from about \$15
10 million on 12/31/06 to about \$1.6 million on 12/31/09 (plus about \$1.05 million of
11 real estate owned), and since more than \$8 million has been paid to withdrawing
12 Members since the start of 2007, simply comparing current net income to historical
13 net income is no longer a meaningful approach to assessing the Fund’s performance.
14 A more appropriate approach now being used is now to track the Book Value of a
15 \$10,000 Investment, as discussed below.

16 As a reminder, since this is an accrual (rather than cash based) Income
17 Statement, the net income also includes expenses for 100% of the fees billed by the
18 Receiver and his attorney although they were not actually paid. The accrued unpaid
19 fees are shown as Current Liabilities on the Balance Sheet.

20 2.1. Income Statement: For the calendar year 2009, the Fund recorded
21 negative net income of \$1,412,698 which includes Bad Debt expenses of \$1,125,000.
22 These Bad Debt expenses were taken as an adjustment to try more accurately to reflect
23 the Trustee’s best estimate of the current market value of the Fund’s assets.

24 2.2. Balance Sheet: For the period ending 12/31/09, the loan portfolio is
25 valued at \$1,649,322 and the amount of “Real Estate Owned” (“REO”) of \$1,050,000
26 reflects real estate which has been taken back by the Fund through foreclosures.
27 Additional foreclosures are expected, so the amount of REO is expected to grow.
28

1 2.3. Recap of Members' Equity: As of 12/31/09, the book value of a \$10,000
2 original investment is \$3,858 (i.e. about 38.6% of Members' original investment).
3 After sustained growth in the value of their investment during the Receivership
4 through 2006, the drop in Members' equity in 2007, 2008 and 2009 is a continued
5 reflection of the bad debt write-offs taken and of the extreme weakening of the
6 market. When put into the context of the overall continued turbulence in the real
7 estate and subprime mortgage markets, the Emvest Mortgage Fund continues to be in
8 stronger financial condition than many others.

9 **3. Estimated Timeline and Valuation for Fund Liquidation:**

10 In his Seventeenth Report, the Receiver identified a plan with the goal of
11 liquidating the Fund's assets by the end of the first quarter of 2010. In its "Order Re;
12 Receiver's Seventeenth Report", the Court approved that plan and timeline. The
13 Receiver is now implementing that plan, and he believes that the target date of Fund
14 liquidation by the end of March 2010 is still achievable.

15 Liquidation of the Fund's assets should yield a return to current Members of
16 about 39% of their original investment. Since Members have already received 45% of
17 their original investment back in payments (including both interest and return of
18 equity), members would have received back a total of about 84% of their original
19 investment.

20 DATED: January 8, 2010

GREENBERG & BASS LLP

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22 By: /s/ James R. Felton
23 JAMES R. FELTON
24 Attorneys for Receiver
25 Dennis Murphy
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G&B
GREENBERG & BASS LLP

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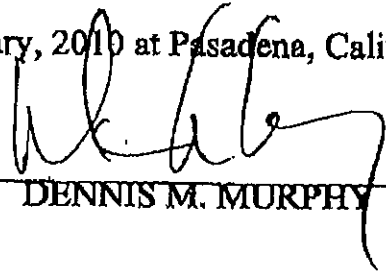
VERIFICATION OF DENNIS M. MURPHY

I, Dennis M. Murphy, declare as follows:

I am the Court appointed Permanent Receiver in this matter. I have read the Eighteenth Report of Receiver to be filed concurrently with this Verification and know the contents thereof. The information contained therein is true and correct of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of January, 2010 at Pasadena, California.



DENNIS M. MURPHY

G&B
GARRETT & BASSETT

EXHIBIT A

**EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
BALANCE SHEET
December 31, 2009**

ASSETS

Current Assets		
Cash in Bank	\$	464,044
Accrued Interest Receivable		56,433
Total Current Assets		\$520,477
 Loan Portfolio		
Mortgage Loans held	\$	1,353,682
Loans in Process & Advanced Costs		309,816
Allowance for Foreclosed Assets		(14,176)
		\$1,649,322
 Other Assets		
Real Estate Owned	\$	1,050,000
Bond - Certificate of Deposit		10,000
		\$1,060,000
Total Other Assets		\$1,060,000
Total Assets		\$3,229,799

LIABILITIES AND EQUITY

Current Liabilities		
Accrued Expenses - Attorney for Receiver	\$	50,538
Accrued Expenses - Receiver		147,283
		\$ 197,821
Total Current Liabilities		\$ 197,821
 Total Members' Equity		 3,031,978
Total Liabilities and Members' Equity		\$ 3,229,799

OK 12-29-09
[Signature]

**EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
INCOME STATEMENT
FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2009**

Revenue		
Interest Income	\$	59,886
		<u>59,886</u>
Total Revenue	\$	59,886
Operating Expenses		
Accounting/Bus Operations - Receiver		104,790
Advance Insurance		-
Attorney Expenses - Receiver		67,771
Bad Debt		1,125,000
Bank Service Charges		6,844
Licenses, Fees & Permits		570
Litigation Response - Receiver		-
Loan Documentation		-
Loan Servicing - FCI		240
Miscellaneous		-
Office Expense		15,759
REO Costs		183,457
Taxes		2,600
Tax Issues - Receiver		-
		<u>-</u>
Total Operating Expenses	\$	1,507,031
Net Ordinary Income		<u>(1,447,145)</u>
Other Income/(Expense)		
Other Income		34,447
Interest Other		-
Other Expense		-
		<u>-</u>
Net Other Income/(Expense)		<u>34,447</u>
Net Income		<u><u>\$ (1,412,698)</u></u>

EMVEST MORTGAGE FUND LLC
(A LIMITED LIABILITY COMPANY)
RECAP OF MEMBERS EQUITY
FOR THE TIME PERIOD 01/01/02 THROUGH 12/31/09

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Totals</u>
Members' Equity at Beginning of Year	-0-	\$ 3,774,359	\$ 10,646,176	\$ 15,269,624	\$ 15,003,527	\$ 15,840,643	\$ 9,105,176	\$ 5,421,079	
Capital Contributions	\$ 4,215,807	8,080,495	8,014,408	0	0	0	0	0	20,310,710
Net Income	97,702	520,460	721,953	1,147,862	2,790,958	70,881	(1,842,715)	(1,412,698)	2,094,403
Distributions to Members	(124,574)	(908,462)	(1,570,242)	(857,856)	(992,290)	(687,881)	(532,188)	(486,199)	(6,203,952)
Withdrawals to Members	(182,734)	(426,570)	(2,140,175)	(556,103)	(973,373)	(6,214,386)	(1,309,194)	(490,204)	(12,451,150)
Rounding						1	0	0	2
Syndication Costs	(231,842)	(394,106)	(402,496)	-	11,821	95,918	0	0	(920,705)

Members' Equity at End of Year	\$ 3,774,359	\$ 10,646,176	\$ 15,269,624	\$ 15,003,527	\$ 15,840,643	\$ 9,105,176	\$ 5,421,079	\$ 3,031,978	\$ 2,829,308
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Book Value of \$10,000 Investment	\$ 9,359	\$ 9,109	\$ 8,695	\$ 8,817	\$ 9,811	\$ 9,275	\$ 6,491	\$ 3,858	
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Emvest Mortgage Fund
Schedule of Accrued Interest
12/31/09

<u>FCI Loan #</u>	<u>Name</u>	<u>Balance at 12/31/09</u>	<u>Rate</u>	<u>Last Payment</u>	<u>End of Month</u>	<u># of Days</u>		<u>Interest Due</u>
FCI/1	Thomas	540,000.00	14.500%	02/08/09	12/31/09	326	F	24,026.30
ALG/122	Sellers	120,000.00	12.000%					0.00
FCI/8	Praise	160,000.00	12.950%	11/11/07	12/31/09	781	BK	9,707.18
ALG/123	Zohn	223,181.72	12.000%	11/09/08	12/31/09	417	F	17,169.71
FCI/27	Nelson	<u>310,500.00</u>	12.500%	11/09/09	12/31/09	52		<u>5,529.45</u>
Grand Totals		<u>1,353,681.72</u>						<u>56,432.64</u>

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **16000 Ventura Boulevard, Suite 1000, Encino, California 91436.**

On January 8, 2010, I served the foregoing document described as **RECEIVER'S EIGHTEENTH VERIFIED REPORT AND PETITION FOR INSTRUCTIONS** on the interested parties in this action.

- by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

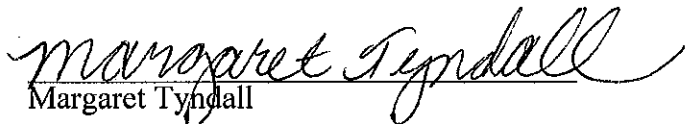
- BY REGULAR MAIL:** I deposited such envelope in the mail at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was mailed with postage thereon fully prepaid.

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

- BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 16000 Ventura Boulevard, Suite 1000, Encino, California. The envelope was deposited with delivery fees thereon fully prepaid.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

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 under the laws of the State of California that the foregoing is true and correct.

Executed on January 8, 2010, at Encino, California.


Margaret Tyndall

SERVICE LIST

United States Securities and Exchange Commission
v. Emvest Mortgage Fund, et al.
Case No. 04CV2295-DMS(POR)

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Notices

3:04-cv-02295-DMS-RBB SEC v. Emvest Mortgage Fund, et al **CASE CLOSED on 05/17/2006**
REFER, SEALDC, TERMED, TRIAL

U.S. District Court**Southern District of California****Notice of Electronic Filing**

The following transaction was entered by Felton, James on 1/8/2010 at 2:51 PM PST and filed on 1/8/2010

Case Name: SEC v. Emvest Mortgage Fund, et al

Case Number: 3:04-cv-02295-DMS-RBB

Filer: Dennis M Murphy

WARNING: CASE CLOSED on 05/17/2006

Document Number: 479

Docket Text:

NOTICE by Dennis M Murphy of Receiver's Eighteenth Verified Report and Petition for Instructions (with exhibit and proof of service) (Felton, James)

3:04-cv-02295-DMS-RBB Notice has been electronically mailed to:

David Robert Clark Drclarklaw@att.net

James R Felton jfelton@greenbass.com, twilliams@greenbass.com

Joseph Jr Scanlan , A jas@millermorton.com, lac@millermorton.com

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Robert Anthony Cocchia rcocchia@mckennalong.com, lwhitaker@mckennalong.com

3:04-cv-02295-DMS-RBB Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=1/8/2010] [FileNumber=3909488-0]
[4b1daadc8180a693305c50ce9acb29e700384e3604b0023ac2db28949de9577a03c0
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