

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
OCT 31 2002

DEPARTMENT OF REAL ESTATE

By Jean J. Rumbold

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 DANIEL WELLS MARCHAND and ) CASE NO. H-8031 SF  
14 MW ASSOCIATES, INC., ) OAH NO. N-2002040307  
15 Respondents. ) STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between DANIEL WELLS  
17 MARCHAND and MW ASSOCIATES, INC., represented by Christopher R.  
18 Lucas, Goforth & Lucas, Attorneys at Law, and the Complainant,  
19 acting by and through Deidre L. Johnson, Counsel for the  
20 Department of Real Estate, as follows for the purpose of settling  
21 and disposing the Accusation filed on December 21, 2001, in this  
22 matter:

23 1. All issues which were to be contested and all  
24 evidence which was to be presented by Complainant and Respondents  
25 at a formal hearing on the Accusation, which hearing was to be  
26 held in accordance with the provisions of the Administrative  
27

1 Procedure Act (APA), shall instead and in place thereof be  
2 submitted solely on the basis of the provisions of this  
3 Stipulation and Agreement.

4 2. Respondents have received, read and understand the  
5 Statement to Respondents, and the Discovery Provisions of the APA  
6 filed by the Department of Real Estate in this proceeding.

7 3. On January 2, 2002, Respondents filed their Notice  
8 of Defense pursuant to Section 11505 of the Government Code for  
9 the purpose of requesting a hearing on the allegations in this  
10 matter. Respondents hereby freely and voluntarily withdraw said  
11 Notice of Defense. Respondents acknowledge that they understand  
12 that by withdrawing said Notice of Defense they will thereby  
13 waive their rights to require the Commissioner to prove the  
14 allegations in the Accusation at a contested hearing held in  
15 accordance with the provisions of the APA, and that they will  
16 waive other rights afforded to them in connection with the  
17 hearing such as the right to present evidence in defense of the  
18 allegations in the Accusation and the right to cross-examine  
19 witnesses.

20 4. Respondents, pursuant to the limitations set forth  
21 below, hereby admit that the factual allegations pertaining to  
22 them in Paragraphs I through IV of the Accusation filed in this  
23 proceeding are true and correct and the Real Estate Commissioner  
24 shall not be required to provide further evidence of such  
25 allegations.

26 5. Without admitting the truth of the allegations  
27 pertaining to them contained in the remaining paragraphs of the

1 Accusation, Respondents stipulate that they will not interpose a  
2 defense thereto. This Stipulation is based on the factual  
3 allegations as to Respondents contained in the Accusation. In  
4 the interests of expedience and economy, Respondents choose not  
5 to contest these allegations, but to remain silent and understand  
6 that, as a result thereof, these factual allegations, without  
7 being admitted or denied, will serve as the basis for the  
8 disciplinary action stipulated to herein. The Real Estate  
9 Commissioner shall not be required to provide further evidence to  
10 prove said factual allegations to impose the stipulated  
11 discipline herein.

12           6. It is understood by the parties that the Real  
13 Estate Commissioner may adopt the Stipulation and Agreement as  
14 her decision in this matter thereby imposing the agreed penalty  
15 and sanctions on Respondents' real estate licenses and license  
16 rights as set forth in the below "Order". In the event that the  
17 Commissioner in her discretion does not adopt the Stipulation and  
18 Agreement, it shall be void and of no effect, and Respondents  
19 shall retain their rights to a hearing and proceeding on the  
20 Accusation under all the provisions of the APA and shall not be  
21 bound by any admission or waiver made herein.

22           7. The Order or any subsequent Order of the Real  
23 Estate Commissioner made pursuant to this Stipulation and  
24 Agreement shall not constitute an estoppel, merger or bar to any  
25 further administrative or civil proceedings by the Department of  
26 Real Estate with respect to any matters which were not  
27

1 specifically alleged to be causes for Accusation in this  
2 proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and  
5 waivers, and for the purpose of settlement of the pending  
6 Accusation without a hearing, it is stipulated and agreed that  
7 the following determination of issues shall be made:

8 The acts and/or omissions of Respondents DANIEL WELLS  
9 MARCHAND and MW ASSOCIATES, INC. as stipulated above constitute  
10 grounds for the stipulated disciplinary action against the real  
11 estate broker licenses and license rights of Respondents under  
12 the provisions of Sections 10176(a) and 10177(g) of the  
13 California Business and Professions Code. This settlement  
14 shall/may not be used as an admission of liability in any civil  
15 action including the Cynthia and Susan Pisani case herein.

16 ORDER

17 A. All real estate licenses and license rights of  
18 Respondents DANIEL WELLS MARCHAND and MW ASSOCIATES, INC. are  
19 hereby revoked.

20 B. A restricted real estate broker license shall be  
21 issued to Respondent DANIEL WELLS MARCHAND and a restricted real  
22 estate broker corporation license shall be issued to Respondent  
23 MW ASSOCIATES, INC., pursuant to Section 10156.6 of the Code if  
24 they each make application therefor and pay to the Department of  
25 Real Estate the appropriate fee for the respective license within  
26 ninety (90) days from the effective date of the decision.

1           C. The restricted licenses issued to Respondents shall  
2 be subject to all of the provisions of Section 10156.7 of the  
3 Business and Professions Code and to the following limitations,  
4 conditions, and restrictions imposed under authority of Section  
5 10156.6 of that Code:

6           (1) The restricted license issued to each Respondent  
7           may be suspended prior to hearing by Order of the  
8           Real Estate Commissioner in the event of such  
9           Respondent's conviction or plea of nolo contendere  
10          to a crime that is substantially related to such  
11          Respondent's fitness or capacity as a real estate  
12          licensee.

13          (2) The restricted license issued to each Respondent  
14          may be suspended prior to hearing by Order of the  
15          Real estate Commissioner on evidence satisfactory  
16          to the Commissioner that such Respondent has  
17          violated provisions of the California Real Estate  
18          Law, the Subdivided Lands Law, Regulations of the  
19          Real Estate Commissioner or conditions attaching  
20          to the restricted license.

21          (3) Respondents shall not be eligible to apply for the  
22          issuance of an unrestricted real estate license,  
23          nor the removal of any of the conditions of the  
24          restricted license, until four (4) years have  
25          elapsed from the effective date of this Decision.

26          (4) Respondent DANIEL WELLS MARCHAND shall, within  
27          nine (9) months from the effective date of this

1 Decision, present evidence satisfactory to the  
2 Real Estate Commissioner that Respondent has,  
3 since the most recent issuance of an original or  
4 renewal real estate license, taken and  
5 successfully completed the continuing education  
6 requirements of Article 2.5 of Chapter 3 of the  
7 Real Estate Law for renewal of a real estate  
8 license. If Respondent DANIEL WELLS MARCHAND  
9 fails to satisfy this condition, the Commissioner  
10 may order the suspension of the restricted license  
11 until the Respondent presents such evidence. The  
12 Commissioner shall afford Respondent the  
13 opportunity for hearing pursuant to the  
14 Administrative Procedure Act to present such  
15 evidence.

- 16 (5) Respondent DANIEL WELLS MARCHAND shall, within six  
17 (6) months from the effective date of this  
18 Decision, take and pass the Professional  
19 Responsibility Examination administered by the  
20 Department including the payment of the  
21 appropriate examination fee. If Respondent fails  
22 to satisfy this condition, the Commissioner may  
23 order suspension of the restricted license until  
24 Respondent passes the examination.

- 25 (6) Respondents DANIEL WELLS MARCHAND and MW  
26 ASSOCIATES, INC., jointly and severally, shall  
27 submit proof to the satisfaction of the Real

1 Estate Commissioner that they have made payment,  
2 restitution, and/or remediation to Cynthia Pisani  
3 and Susan Pisani according to the final outcome of  
4 the certain civil action in the Superior Court of  
5 the State of California, in and for the County of  
6 Alameda, Eastern Division, in Case No. V-019442-6,  
7 and related cross actions, and shall submit such  
8 proof within two (2) years after any court order  
9 or jury verdict or judgment adverse to either or  
10 both Respondents and in favor of the Pisanis  
11 becomes final, or within two years (2) after entry  
12 by either or both Respondents into any stipulated  
13 disposition of the above civil case by way of  
14 stipulation, settlement agreement, mutual release,  
15 or other contractual arrangement imposing terms of  
16 payment, restitution, and/or remediation against  
17 Respondents and in favor of the Pisanis, unless  
18 the parties to that action have agreed otherwise.  
19 If Respondents fail to satisfy this condition, the  
20 Real Estate Commissioner may order the suspensions  
21 of their respective restricted licenses until the  
22 Respondents present such evidence. The  
23 Commissioner shall afford Respondents the  
24 opportunity for hearing pursuant to the

25 ///

26 ///

27 ///

1 Administrative Procedure Act to present such  
2 evidence.

3  
4  
5 September 11, 2002 DATED DEIDRE L. JOHNSON  
6 as of September 10, 2002 Counsel for the Complainant  
7

8 \* \* \*

9 I have read the Stipulation and Agreement, have  
10 discussed it with my counsel, and its terms are understood by me  
11 and are agreeable and acceptable to me. I understand that I am  
12 waiving rights given to me by the California Administrative  
13 Procedure Act, and I willingly, intelligently and voluntarily  
14 waive those rights, including the right of requiring the  
15 Commissioner to prove the allegations as to me in the Accusation  
16 at a hearing at which I would have the right to cross-examine  
17 witnesses against me and to present evidence in defense and  
18 mitigation of the charges.  
19

20 9/10/02  
21 DATED

Daniel Wells Marchand  
DANIEL WELLS MARCHAND  
Respondent

22  
23  
24 9/10/02  
25 DATED

Daniel Wells Marchand  
MW ASSOCIATES, INC.  
Respondent by  
DANIEL WELLS MARCHAND

26  
27 ///

1 Approved as to form:

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

9-10-02

DATED

CHRISTOPHER R. LUCAS  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on November 21, 2002.

IT IS SO ORDERED October 1, 2002.

PAULA REDDISH ZINNEBANN  
Real Estate Commissioner

*Paula Reddish*

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
**APR 24 2002**  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

*In the Matter of the Accusation of*

DANIEL WELLS MARCHAND, and  
MW ASSOCIATES, INC.,

} Case No. H-8031 SF

} OAH No. N-2002-04-0307

---

*Respondents*

**NOTICE OF HEARING ON ACCUSATION**

*To the above named respondents:*

*You are hereby notified* that a hearing will be held before the Department of Real Estate at

---

**THE OFFICE OF ADMINISTRATIVE HEARINGS  
THE ELIHU HARRIS STATE BUILDING  
1515 CLAY STREET SUITE 206, OAKLAND, CA 94612**

---

on **SEPTEMBER 11 THROUGH 13, 2002; --- SEPTEMBER 17 THROUGH 20, 2002; --- and, SEPTEMBER 23 THROUGH 25, 2002**, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

*Dated:* APRIL 23, 2002

By Deidre L. Johnson  
DEIDRE L. JOHNSON, Counsel  
RE 501 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel  
2 State Bar No. 66322  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-0789

FILED  
DEC 21 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 DANIEL WELLS MARCHAND, and ) NO. H-8031 SF  
13 MW ASSOCIATES, INC., )  
14 Respondents. ) ACCUSATION

15 The Complainant, Charles W. Koenig, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against DANIEL WELLS MARCHAND and MW ASSOCIATES, INC.,  
18 is informed and alleges as follows:

19 I

20 Respondent DANIEL WELLS MARCHAND (hereafter Respondent)  
21 is presently licensed and/or has license rights under the Real  
22 Estate Law, (Part 1 of Division 4 of the Business and Professions  
23 Code, hereafter the Code) as an individual real estate broker and  
24 as the designated broker officer of MW ASSOCIATES, INC.

25 II

26 Respondent MW ASSOCIATES, INC. (hereafter MWA) is  
27 presently licensed and/or has license rights under the Code as a  
real estate broker corporation.

1 III

2 The Complainant, Charles W. Koenig, a Deputy Real  
3 Estate Commissioner of the State of California, makes this  
4 Accusation against Respondents in his official capacity and not  
5 otherwise.

6 IV

7 Within the three years last past, Respondents engaged  
8 in the business and acted in the capacity of a real estate  
9 broker in California within the meaning of Section 10131(a) of  
10 the Code, for or in expectation of compensation, wherein  
11 Respondents sold or offered to sell, bought or offered to buy,  
12 solicited prospective sellers or purchasers of, and/or  
13 negotiated the purchase, sale or exchange of real property.

14 V

15 In or about July of 1998, while acting in the  
16 capacity of a real estate licensee as alleged above,  
17 Respondents negotiated the listing of certain rural residential  
18 real property located at 8680 Oak Tree Lane, Castro Valley,  
19 California, for sale on behalf of the owner Matthew Biondi, and  
20 thereafter negotiated the sale of the property to Cynthia and  
21 Susan Pisani (hereafter the Pisani property). Escrow closed on  
22 or about December 31, 1998.

23 VI

24 In connection with the above transaction, Respondents  
25 MARCHAND and MWA failed to disclose material information to the  
26 Pisanis affecting the value and desirability of the property,  
27 including but not limited to the water supply, landslides,

1 boundaries, and other matters that are more particularly alleged  
2 below.

3 VII

4 When Respondents obtained the listing in 1998, the  
5 Pisani property consisted of over six acres of land, with  
6 existing sources of water for the residence both from a well on  
7 the Pisani property, and from spring water piped in from a spring  
8 located on the neighboring Mullens' property, known as and  
9 hereafter referred to as the Rock Spring.

10 VIII

11 In or about August of 1981, Respondent MARCHAND had  
12 purchased the residential real property located at 8600 Oak Tree  
13 Lane, Castro Valley, California, adjacent to the Pisani property.

14 IX

15 In or about the spring of 1989, Respondents MARCHAND  
16 and MWA had obtained the listing of the current Pisani property  
17 for sale on behalf of the prior owner, Lennis Jagoe, and  
18 thereafter negotiated the sale of the property to Matthew Biondi.  
19 Escrow closed on or about May 3, 1989. During the course of the  
20 negotiations, in which Respondents were the real estate brokers  
21 on behalf of Jagoe, Biondi had the onsite well tested, learned  
22 that the water output was below Alameda County standards for  
23 residential water supply, and reported the problem to  
24 Respondents.

25 X

26 Respondents and Jagoe negotiated with Biondi to resolve  
27 the water issue by providing Biondi with a copy of a water

1 agreement between the Jagoes and Clarence Bush, the prior owner  
2 of the Mullens' property. The water agreement was dated  
3 September 17, 1981, and had been notarized by Respondent  
4 MARCHAND. It granted the Jagoes the right to use Rock Spring as  
5 a source of water for emergency purposes to supplement the well  
6 on the Pisani property. Respondents MARCHAND, MWA, and Jagoe  
7 expressly and/or impliedly represented to Biondi that if Biondi  
8 purchased the property, he would have the legal right to access  
9 the spring water from Rock Spring on the Mullens' property to  
10 supplement the well water to obtain sufficient water for  
11 residential purposes. Respondents MARCHAND, MWA, and Jagoe  
12 expressly and/or impliedly represented to Biondi that the water  
13 agreement ran with the land, and that he would have a marketable  
14 residential property for future resale with a sufficient water  
15 supply.

16 XI

17 In reliance on the above representations, Biondi  
18 purchased the property in about May of 1989 and thereafter used  
19 Rock Spring as a primary source of water for over nine years.  
20 At no time either prior or subsequent to close of escrow did  
21 Respondent MARCHAND inform Biondi that Respondent had or  
22 claimed to have any right, title, easement, or other legal  
23 interest in the 1981 water agreement, in Rock Spring itself or  
24 the land upon which Rock Spring was located, or to the use of  
25 spring water from Rock Spring for Respondent's property.

26 ///

27 ///

1 XII

2 In or about July of 1998, Respondents obtained the  
3 listing of the Pisani property for sale on behalf of Biondi, and  
4 thereafter negotiated the sale of the property to Cynthia and  
5 Susan Pisani. In the course of the negotiations, Respondents  
6 MARCHAND and MWA, and Biondi represented to the Pisanis that the  
7 sources of water for the residential property were both from a  
8 well and from spring water piped in from a spring called Rock  
9 Spring. In reliance on all material representations made,  
10 including the above, the Pisanis purchased the property and  
11 escrow closed on or about December 31, 1998.

12 XIII

13 Respondents owed a duty to the buyers, the Pisanis,  
14 pursuant to Civil Code Section 2079.16, to diligently exercise  
15 reasonable skill and care in the performance of their duties, and  
16 to disclose all facts known to Respondents materially affecting  
17 the value or desirability of the Pisani property that were not  
18 known to, or within the diligent attention and observation of the  
19 parties.

20 XIV

21 At no time prior to close of escrow on or about  
22 December 31, 1998, did Respondents MWA and MARCHAND disclose to  
23 the Pisanis the following material facts which were known or  
24 should have been known to Respondents, but were unknown to the  
25 Pisanis:

26 ///

27 ///

1           (a) That in 1989, Biondi had the well tested prior to  
2 his purchase; and/or the poor well test report results Biondi  
3 obtained and reported to Respondent as referred to above;

4           (b) That the well may not meet Alameda County supply  
5 output standards for residential water usage;

6           (c) That Rock Spring was not on the Pisani property;

7           (d) That there was a 1981 water agreement that granted  
8 prior owners of the Pisani property the right to use spring water  
9 from Rock Spring to supplement the well for emergency purposes;  
10 and/or whether said agreement ran with the land;

11           (e) That Respondent MARCHAND either was using or  
12 planned in the future to use the Rock Spring as a source of water  
13 for his property;

14           (f) That Respondent MARCHAND asserted any claim, right,  
15 title, easement, or other legal interest in the 1981 water  
16 agreement, in Rock Spring itself or the land upon which Rock  
17 Spring was located, or to the use of water from Rock Spring;

18           (g) That the Mullens' property was not contiguous to  
19 the Pisani property, and access to Rock Spring and its pipeline  
20 from the Pisani property for maintenance and repair required  
21 crossing over a portion of Respondent MARCHAND's land; and  
22 Respondent failed to provide any right of access or easement  
23 agreement to Pisanis for such access;

24           (h) That at the boundary between the Pisani property  
25 and Respondent MARCHAND's property was a ravine with a road  
26 access easement for the Mullens' property, that was the subject  
27 of on-going disputes, instability, and landslides, including a

1 major landslide on Respondent's side of the ravine in or about  
2 February of 1998, and past and pending litigation;

3 (i) That in connection with prior litigation between  
4 Respondent MARCHAND and the Mullens in 1989, the parties had  
5 obtained a written Preliminary Geotechnical Investigation report  
6 dated December 3, 1989, from William Cotton and Associates that  
7 reported the existence of an active landslide near the ravine on  
8 the Pisani property, as well as at least five active landslides  
9 on Respondent's property on his side of the ravine;

10 (j) That the Pisani property was not secluded as  
11 advertised, in that Respondent MARCHAND had built and/or  
12 maintained a rental unit on his property near the ravine boundary  
13 and within voice distance of the Pisani residence; and/or,

14 (k) That Respondent MARCHAND controlled or intended to  
15 take control of Rock Spring and limit or eliminate the Pisani  
16 property's historical use of spring water from Rock Spring.

17 XV

18 Following the close of escrow, in or about January or  
19 February of 1999, the Pisanis learned from Biondi that the Rock  
20 Spring was on the Mullens' property. Biondi provided them with a  
21 copy of the 1981 water agreement to evidence their right to use  
22 spring water from Rock Spring to supplement the well to support  
23 the Pisani residence.

24 XVI

25 In or about August of 1999, Respondent MARCHAND caused  
26 the Pisanis' access to water from Rock Spring to be cut off by  
27 physical alteration of the pipeline. Thereafter, the Pisanis

1 made interim arrangements for water supply, and an ongoing  
2 dispute and litigation have ensued.

3 XVII

4 By reason of the facts alleged above, Respondents  
5 MARCHAND and MWA have committed acts and/or omissions that  
6 constitute negligence, misrepresentation, fraud and/or dishonest  
7 dealing, and which constitute grounds for disciplinary action  
8 under the provisions of Sections 10176(a), 10177(g), and/or  
9 10176(i) of the Code.

10 XVIII

11 By reason of the facts alleged above, Respondent  
12 MARCHAND has committed acts and/or omissions that constitute  
13 fraud and/or dishonest dealing under the provisions of Section  
14 10177(j) of the Code.

15 WHEREFORE, Complainant prays that a hearing be  
16 conducted on the allegations of this Accusation and that, upon  
17 proof thereof, a decision be rendered imposing disciplinary  
18 action against all license(s) and license rights of Respondent  
19 under the Real Estate Law (Part 1 of Division 4 of the Business  
20 and Professions Code), and for such other and further relief as  
21 may be proper under other provisions of law.

22  
23   
24 CHARLES W. KOENIG  
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,  
27 this 19<sup>th</sup> day of December, 2001.