

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Gary T. Haas

vs.

Case Number: 05-01663  
Hearing Site: Chicago, Illinois

Names of Respondents

CIBC World Markets Corp. and  
James Elton Maxwell, Jr.

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Gary T. Haas ("Claimant") was represented by Arthur L. Leider, Investor Arbitration Specialists, Inc., San Diego, California.

CIBC World Markets Corp. ("CIBC") and James Elton Maxwell, Jr. ("Maxwell"), hereinafter collectively referred to as "Respondents," were represented by Elizabeth Rose Aylett, Esq. and Ian Katz, Esq., CIBC World Markets Corp., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 30, 2005. The Submission Agreement of Claimant was signed on or about February 25, 2005.

Claimant's Motion to Take Leave to Amend the Statement of Claim was filed on or about August 9, 2006. Respondents' Opposition to Claimant's Motion was filed on or about August 16, 2006. Claimant's Response to Respondents' Opposition was filed on or about August 30, 2006. Claimant's Amended Statement of Claim was filed on or about September 11, 2006.

The Statement of Answer and Motion to Dismiss was filed jointly by Respondents on or about July 6, 2005. The Submission Agreement of CIBC was signed on or about April 15, 2005. The Submission Agreement of Maxwell was signed on or about June 20, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of duty; negligence; fraud; violation of federal and state securities laws and NASD Rules of Fair Practice; and breach of contract. The causes of action related to the recommendation and purchase of two different annuities: the ING GoldenSelect Premium Plus Annuity and the Manulife Venture Vantage Annuity. Claimant alleged that these annuity policies were inappropriate for his retirement investment needs and his moderate risk tolerance.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a cause of action for which relief may be granted; Claimant's losses, if any, were sustained as a result of Claimant's own negligence and/or contributory negligence; Claimant failed to mitigate his damages; and Claimant's claims are barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 800,000.00
Exemplary/Punitive Damages	\$ 1,000,000.00
Interest	Unspecified
Attorneys' Fees (Representation Fees)	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel granted Claimant's Motion to Take Leave to Amend the Statement of Claim on or about September 11, 2006.

Claimant's Notice of Withdrawal for any Claims Based Upon Violation of NASD or NYSE Suitability Rules was filed on or about on or about September 21, 2006.

At the hearing, Respondents orally moved for dismissal. The Panel denied the motion on the record.

At the hearing, Maxwell requested expungement. The Panel grants the request herein.

Claimant filed a post-hearing submission on or about October 1, 2006.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submission, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent James E. Maxwell Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent James E. Maxwell, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Panel has made the following affirmative findings of fact:

The claim, allegation, or information is false. The claim of offer of benefit under variable annuity was false.

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 500.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is CIBC World Markets Corp.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

April 25-28, 2006, adjournment requested jointly (Fee Waived by NASD - Mediation)	= \$ 1,200.00
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### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: September 21, 2006 1 session	
One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: August 17, 2005 1 session	
Seven (7) Hearing sessions x \$1,200.00	= \$ 8,400.00
Hearing Dates: September 26, 2006 2 sessions	
September 27, 2006 2 sessions	
September 28, 2006 3 sessions	
<b>Total Forum Fees</b>	<b>= \$ 10,050.00</b>

The Panel has assessed \$5,025.00 of the forum fees to Gary T. Haas.

The Panel has assessed \$5,025.00 of the forum fees to CIBC World Markets Corp.

### **FEE SUMMARY**

Claimant, Gary T. Haas, is liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,525.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

Respondent, CIBC World Markets Corp., is liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 13,575.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

### **ARBITRATION PANEL**

Jack W. Rosen – Public Arbitrator, Presiding Chair  
Stephen W. Heil, Esq. - Public Arbitrator  
Anthony P. Pecora, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Jack W. Rosen  
Jack W. Rosen  
Public Arbitrator, Presiding Chair

10/26/06  
Signature Date

/s/ Stephen W. Heil, Esq.  
Stephen W. Heil, Esq.  
Public Arbitrator

10/24/06  
Signature Date

/s/ Anthony P. Pecora, Esq.  
Anthony P. Pecora, Esq.  
Non-Public Arbitrator

10/27/06  
Signature Date

10/27/06  
Date of Service (For NASD office use only)

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