

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: MICHAEL W. LOVE

**5:02-bk-17489 E
CHAPTER 13**

**ORDER REINSTATING THE AUTOMATIC STAY
AND SETTING MOTION FOR RELIEF FOR HEARING**

Pending before the court is Marion DeLong's Motion for Relief from Stay. DeLong filed her Motion on September 2, 2002, and on September 21, 2002, the Court set the Motion to be heard on October 8, 2002. When the Court called the case for hearing, DeLong's attorney, J. Maurice Rogers, in reliance upon 11 U.S. C. § 362(e), asserted that the motion was moot because by operation of law the automatic stay terminated on October 2, 2002, and the hearing was held six days past the statutorily mandated hearing deadline. While it is true that, as a general rule, the stay will terminate automatically if a hearing is not held within 30 days after a motion for relief is filed, courts have found that the passage of 30 days does not always divest the Bankruptcy Court of jurisdiction to reinstate or continue the stay. Cases addressing exceptions to the § 362(e) automatic termination of the stay recognize circumstances similar to the ones present in this case. In *Borg-Warner Acceptance Corporation v. Hall*, 685 F. 2d 1306, 1308 (11th Cir.1982), the court found "waiver" of the 30-day limitation when the creditor proceeded without objection to hearing 30 days beyond the filing of the motion for relief. *See also In re Craghead*, 57 B.R. 366, 368 n. 4 (W.D. Mo. 1985) (noting that "reported cases indicate that the mere passage of thirty days does not always operate to divest the Bankruptcy Court of jurisdiction to reinstate or continue the stay" and citing cases wherein "courts have been willing to find a 'waiver' of the thirty-day limitation"). In this case, the creditor, although receiving notice of the hearing well in advance of the 30-day stay expiration date, waited until the

day of the hearing (only 36 days after filing the motion) to assert that the stay was no longer in effect.

Accordingly, it is hereby

ORDERED that the Automatic Stay be and is hereby reinstated. After communicating with the parties' attorneys to find the earliest possible date for hearing, the Motion for Relief is set for ***October 29, 2002 at 9:30 a.m. at the U.S. Bankruptcy Courthouse, 300 W. Second St., Room 320, Little Rock, Arkansas.***

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATED: _____

cc: Ms. Jean Madden, attorney for Debtor
Mr. J. Maurice Rogers, attorney for Marion DeLong
Ms. Joyce B. Babin, Chapter 13 Trustee
U.S. Trustee