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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 98-57226
MICHAEL S. IOANE, SR., Chapter 13
Debtor.

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ORDER DENYING MOTION OF BA PROPERTIES

BA Properties, Inc. filed its Motion For Retroactive Relief From/Annulment Of The Automatic Stay with the court on June 18, 1999. It originally came before the court for hearing on June 30, 1999. As this case had been dismissed by an order filed September 11, 1998, and no prior motion had been filed by movant, the court questioned its jurisdiction. The hearing was continued to allow the movant to consider the court's concerns based on In re Taylor, 854 F.2d 478 (9th Cir. 1989). A further hearing was held on July 14, 1999, at which time the motion was taken under submission.

In the course of the hearing on this motion, the court discussed its interpretation of Taylor and the fact that in Taylor the Court appears to have made it clear that this court lacks jurisdiction to

1 consider a "new" matter post dismissal. The comments of the court at
2 the time of the hearings are incorporated by reference and will not
3 be repeated in full. The court perceived BA's motion to be a "new"
4 matter and is still of that view.

5 BA urges the court to consider its motion for stay relief as a
6 mechanism for enforcement of a prior order of the court. Ioane has
7 filed four Chapter 13 cases with the court all of which have been
8 dismissed. This case is the second in that series.

9 The first case, being Case No. 98-51454, was dismissed on July
10 15, 1998. The order of dismissal provided that Ioane was "barred for
11 a period of 180 days from July 8, 1998, from being a debtor in any
12 case under this title pursuant to 11 U.S.C. § 109(g)(1)." BA argues
13 that Ioane's filing of this case nine days after the dismissal, on
14 July 24, 1998, was a clear violation of the order. It argues that the
15 court should use the stay motion in the second case as a means of
16 insuring that abuse of the system does not occur.

17 Where § 109(g) has been involved, courts have protected the
18 integrity of their rulings. In such circumstances, courts have found
19 that the filing of the second alleged bankruptcy case did not create
20 an automatic stay. See, In re Hollberg, 208 B.R. 755,756 (Bk. Ct.
21 D.C. 1997); Miller v. First Federal Savings & Loan of Monessen, 143
22 B.R. 815, 819-820 (Bk. Cr. W.D. Pa. 1992); In re Prud'Homme, 161 B.R.
23 747, 751 (Bk. Ct. E.D. N.Y. 1993). Since the prohibited filing did
24 not create an automatic stay, the creditor's actions were validated.
25 No authority has been provided that a stay motion can be used to
26 accomplish this purpose. Moreover, granting relief from an automatic
27 stay that did not come into existence because the filing was

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

1 prohibited has no basis in law or logic.

2 BA Properties' motion is denied without prejudice.

3 DATED: _____

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JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

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