CLAIM OF GUNNOSUKE MORIMOTO

[No. 146-35-282. Decided June 7, 1951]

FINDINGS OF FACT

This claim, in the amount of $965, was received by the Attorney General on January 24, 1949, and is for loss through forced sale, expenditures for transportation of property, and moneys expended on preevacuation and postevacuation travel. All the property involved represent the community estate of claimant and his wife, Chiye Morimoto. Claimant and his wife were both born in Japan of Japanese parents and at no time since December 7, 1941, has either gone to Japan. On December 7, 1941, and for some time prior thereto, the parties actually resided at 2580 Sutter Street, San Francisco, California, where they continued to reside until March 27, 1942, on which date they voluntarily departed from San Francisco and moved inland to Gerber, California. Their departure from San Francisco was prior to but in anticipation of an order of exclusion therefrom; however, Gerber, like San Francisco, was in Military Area No. 1. Claimant's departure from San Francisco marked the culmination of a considerable amount of planning which began "early in 1942" when, according to his testimony, he become convinced that evacuation of all alien Japanese from the west coast was imminent and concluded to move inland. In consequence of this decision and because, according to his testimony, "I had no assurance that I would be able to transport the items satisfactorily in case I should be later forced to again move," claimant proceeded to dispose of his larger and bulkier property items, i. e., his refrigerator, stove, washing machine, two oak dressers, and living room set consisting of Chesterfield and two over-

391156—56——16

stuffed chairs. The refrigerator was sold "late in January 1942," the washing machine "in February 1942," and the remaining items in March 1942. Claimant alleges loss on sale of all of these items and also of two radios. The evidence fails to establish a sale of the two radios as alleged and claimant has failed to make the necessary affirmative showing that his action in selling the refrigerator and washing machine in January and February of 1942 for less than their market value was reasonable in the circumstances. With respect to the two dressers, Chesterfield and chairs, the evidence establishes, and it is accordingly found, that claimant received the then fair value of these articles from their sale and that no loss was in fact sustained. In the case of the stove, however, the then fair value of which was $40, claimant received only $20 on the sale with resultant loss in equal amount. Claimant acted reasonably in the circumstances in selling his stove, the use of which he required up to the time of departure, at a $20 loss.

After claimant and his family had arrived at Gerber, claimant arranged to have the remainder of his household goods and effects transported from San Francisco to Gerber at a cost of $80. For the reasons set forth below, it is found as a fact that claimant did not act reasonably, in the circumstances then prevailing, in removing his goods from San Francisco to Gerber and in making this expenditure.

Claimant resided at Gerber until May 19, 1942, when he was evacuated under military orders pursuant to Executive Order No. 9066 to the Merced Assembly Center, whence he later was permitted to relocate in Chinook, Montana. Shortly before his evacuation, claimant sold his remaining household furnishings and equipment together with his bicycle, the whole being then fairly worth $167, for $100 with resultant loss of $67. No free market was available to claimant at the time of sale and his act of selling was reasonable in the circumstances.

In addition to the foregoing, claimant alleges an expenditure of $35 on railroad fares for himself, his wife, and son from San Francisco to Gerber, and of "something more than $250" for the transportation of himself, his family, and household effects from Chinook, Montana, back to San Francisco upon the lifting of the Exclusion Orders. The claim originally also included allegations of loss from the sale of a bicycle belonging to claimant's son and, further, for moneys expended in travel of claimant and his family from Gerber to Chinook. These items were subsequently withdrawn by claimant of his own volition.

The losses involved have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant's $67 loss on sale at the time of his evacuation from Gerber is compensable. *Toshi Shimomaye, ante,* p. 1. Claimant's outlays for travel for himself and family from San Francisco to Gerber and, again, from Chinook, Montana, back to San Francisco are not compensable. *Mary Sogawa, ante,* p. 126.

Likewise not compensable is claimant's $80 expenditure for the transportation of his household goods from San Francisco to Gerber. It is true that claimant voluntarily departed from San Francisco prior to but in anticipation of an order of exclusion and that Section 1 of the Statute provides: "As used herein 'evacuation' shall include voluntary departure from a military area prior to but in anticipation of an order of exclusion therefrom." Whether claimant, in going from one portion of Military Area No. 1 to another, qualifies under this provision is unnecessary to determine since, as appears from the findings of fact, he did not act reasonably in the circumstances then prevailing. It is a commonplace in the history of the evacuation that following the designation of Military Areas 1 and 2 by General DeWitt's Public Proclamation No. 1 of March 2, 1942 (7 F. R. 2320), prospective evacuees were urged

"through every available public information channel" to go *beyond the confines of Military Area No. 1,* which was specifically designated as the zone from which persons of Japanese ancestry would be required to leave. See, *Final Report Japanese Evacuation from the West Coast 1942* (GPO, 1943), pp. 101–102, 41, 43; cf. *Western Defense Command and Fourth Army, Press Release, March 7, 1942,* quoted in *The Spoilage* at p. 12; and see, further, *Civilian Exclusion Order No. 1* of March 24, 1942, together with instructions thereto. Obviously, this fact imposes a considerable evidential burden upon a claimant seeking to establish reasonableness of conduct in migrating from one portion of Military Area No. 1 to another after March 2, 1942. Not only has claimant failed to sustain this burden, but the record clearly indicates that at the time of his migration claimant knew he was subject to evacuation so long as he remained within Military Area No. 1. Plainly, then, claimant's transportation expenditure was not "a reasonable * * * consequence" of his evacuation, as required by the Statute, but represented an unnecessary and avoidable outlay.

Claimant's $20 loss on the sale of his stove is compensable. Here, the facts are, essentially, analogous to those involved in *Kinjiro and Take Nagamine, ante,* p. 78. That is to say, claimant having sold his stove in the reasonable belief that his evacuation was impending, cf. *Takeshi Endo, ante,* p. 48, the factual pattern as a whole becomes, basically, one of successive sales in anticipation of evacuation.

This claim includes all interest of the marital community in the subject property, claimant and his wife both being jurisdictionally eligible and the husband under California law having the control and management of community personalty and being proper party claimant therefor. *Tokutaro Hata, ante,* p. 21.