CLAIM OF GEORGE E. SUZUKI

[No. 146–35–4548. Decided April 1, 1955]

FINDINGS OF FACT

This claim, alleging a loss in the amount of $2,072.50 was received by the Attorney General on June 7, 1949. It involved the loss of rental on a dwelling house, recovery of fees paid to an agent for services in caring for claimant's home during his absence, recovery of money paid for repairing the premises in 1947 and 1948, and loss through abandonment of an automobile battery. Claimant expressly waived formal hearing of his claim and submitted it for determination upon the basis of certain evidence, together with any relevant information that might be disclosed by independent investigation. Claimant, both of whose parents were Japanese, was actually residing in the United States on December 7, 1941, and has not since then gone to Japan. Claimant was living at 1049 South Hobart Boulevard, Los Angeles, California, when he was evacuated on April 29, 1942, under military orders issued pursuant to Executive Order No. 9066, dated February 19, 1942. Faced with impending evacuation, claimant acted reasonably in renting his house and engaging the services of a neighbor to care for it; and in abandoning an automobile battery worth $7.50, which he could not take with him to the relocation center. Claimant was unmarried when evacuated.

Claimant employed a neighbor as agent, at $10 a month, which was raised to $15 a month after the first year, to rent his 6-room frame dwelling house, fully furnished, and 3-car garage for $45 a month. Claimant paid his agent altogether $530 for the total period of rental from May 18, 1942, to September 1, 1945. The condition

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of this property at that time was generally good. The fair rental value of the house and garage was $62.50 a month, but under Office of Price Administration regulations its maximum rental rate was fixed at the figure of the tenant's lease. Claimant received altogether $1,777.50 in rental. During the period of rental, claimant paid taxes on the house in the sum of $167.62; and fire insurance of $24.65. During this period claimant, spent $405.11 in ordinary repair of his house, including $10.75 for repair of a vacuum cleaner, over three-fourths of this sum being spent within the first 6 weeks of the rental term to put the house in condition for rental.

On the return of claimant's parents to occupancy of the house in September 1945 (claimant then being in the Army), they found the house in a deplorable condition. The garden was likewise in bad condition, the lawn having disappeared from neglect and the peach trees, orange trees, fuchsias, and other flowering shrubs and plants having been largely destroyed. The yard had been used for the keeping of chickens and rabbits and the house as a children's boarding house. The plaster of many of the rooms was broken, the wallpaper soiled, torn, and scratched, and the window screens had holes in them. In December 1947, claimant paid for painting the outside of the house $165 which had been last painted in 1940 or 1941. In March 1948, he paid $450 for the general inside repairs, including plastering, painting, and wallpapering. Claimant's father, who is a gardener, with the help of a friend replanted the lawn and shrubbery at an expense of $150.

About a month or month and a half after claimant's parents returned to the house in September 1945, claimant's mother first noticed that during this absence children or dogs had pushed earth against the bottom and sides of the house (the weather-boarding came to the ground) which she had always kept free from earth and the moisture which might come from damp earth. When she cleared away this accumulated earth, she found termites which had never before been seen in the house.

About 3 years before evacuation, the house had been inspected for termites and none were found. Such infestation would not have occurred if claimant and his parents had not been excluded from the military area. In May 1947, claimant paid the Certified Termite and Maintenance Co., of Los Angeles, $715 for ridding the house of termites.

All the payments above were made by the claimant's father with some contribution by the claimant. The repairs made after the return of claimant's parents, including that for termite riddance, were not made earlier for the reason that neither claimant nor his parents on their return had the necessary money, as a result of their evacuation, to pay for them. Neither claimant nor his parents received any information on the abuse of the house while they were in the relocation center until about a month or so before the parent's departure therefrom in 1945. Claimant and his parents acted reasonable in making the repairs, including termite destruction, which they did and, in the circumstances, when they did.

REASONS FOR DECISION

The loss resulting from abandonment of an automobile battery, which had a reasonable value of $7.50, is allowable. *Frank Tokuhei Kaku, ante,* p. 29; *Usasuke Charlie Yamamoto, ante,* p. 55.

On the facts found, the alleged losses arising from the difference between fair and reasonable rents on claimant's house and those actually received are not compensable under the Act under the explicit ban of Section 2 (b) (5). *Toshiko Usui, ante,* p. 112. The question as to the compensability of failure to realize on the rental value of property seems to arise only in cases in which the claimants were successful in their efforts to obtain tenants but did not receive as much money as they believed they should have received for permitting use of their properties. Actually, all property both real and personal has

a theoretical rental value in the sense that someone might be found who would be willing to pay for the privilege of using it. Most of the evacuated house owners who, due to the pressures of the time, were unable to find lessees seem to have suffered greater losses in this regard than did the usual evacuated lessor who not only had someone to look after his property but realized some net return on it. Earnings and profits, however, that an evacuee might have expected to receive, if he had not been evacuated or if he had been given adequate time to arrange his affairs, were not compensable losses within the coverage of the Federal Act. Cf. *Takeshi Sakurai, ante,* p. 346.

The instant case presents the less common situation in which the claimant was worse off for having secured a tenant to occupy his property during his absence than he probably would have been if he had permitted the property to stand vacant. There can be no doubt that he acted reasonably and, perhaps, even prudently in making arrangements for the rental of the property. It is equally certain that this was his right and that there was no intention on the part of the Congress to penalize him for the exercise of such right.

Insofar as his damages were extraordinary and not due to normal deterioration or the usual wear and tear incident to rental of property, the case must be viewed, we believe, exactly as if the house had been left unoccupied and as if the injuries had been inflicted by vandals. See *Akiko Yagi, ante,* p. 11. Generally speaking, it would be unreasonable to regard damages amounting, e. g., to common law waste, as having been "compensated" by rent so as to bring them within the proscription language of Section 1 of the Act. This would be true even if it turned out that claimant had realized a net gain in the sense that the total of the rents received had exceeded the total of the expenditures required to place the property in a condition comparable to that in which he had left it. Certainly if a third party vandal had caused the damage, the rent could not be considered as compensation for it. The

situation would seem no different when the wrong was committed by the tenant.

For the same reason, the allowance of compensation for such damage should not be regarded as enhancing claimant's profits contrary to the proscription of Section 2 (b) (5) for no part of the agreed rent was bargained for with a view to covering such a risk. In addition to his obligation to pay the agreed rent, a tenant ordinarily would have incurred independent liability for inflicting tortious injuries; and the owner could have obtained prompt relief and termination of the tenancy in order to prevent further damage. Here, however, since the injuries appear to have been due to excessive wear and tear extending over a long period and since claimant's agent permitted it to continue, liability of the tenant to respond in money damages was at least doubtful. Preventative steps by claimant personally were not possible due to his ignorance of the situation which was caused by his enforced absence. Here, as in other situations, there being no reasonable ground for contrary inference, it may be assumed that claimant acted reasonably in his own interest on the basis of his information. Cf. *Otoichi Kono, ante,* p. 238. Since a damage, to be compensable under the Act does not necessarily have to have been one for which claimant had a cause of action for money damages against another, it is necessary, in these circumstances, to see only that the abusive use of the property that caused the injuries could not reasonably have been within the contemplation of the claimant when he entered into the rental arrangement, and that he did not unreasonably fail to avail himself of remedies or otherwise condone such use.

The $450 paid for the general inside repairs, including plastering, painting, and wallpapering, and the expense of $150 for replanting the lawn and shrubbery were extraordinary and, hence, for the foregoing reasons, serve as measures of compensable damage for the most part. *Kinjiro and Take Nagamine, ante,* p. 78. After making allowance

for ordinary wear and tear, $500 is allowed as fair compensation on these items.

The $715 that claimant was required to pay for ridding the house of termites, also was an extraordinary expense compensable as a loss within the coverage of the Federal Act. *Frank Kiyoshi Oshima, ante,* p. 24. Since no evidence was introduced which would support a finding as to the amount of any damage caused by the termites, the allowance must be confined to the amount actually expended in order to eliminate the infestation as a potential source of damage which, if it had been permitted to occur, would have been a reasonable and natural consequence of claimant's exclusion. It is immaterial that such damage would have occurred after the period of claimant's exclusion had ended. (See opinion denying reconsideration of claim of *Takeshi Sakurai, supra.*) Moreover, the infestation itself might be regarded as a damage in the sense that the need for the corrective work had an adverse effect on the market value of the house which, in absence of better evidence, might have been measured by the cost of the work. Cf. *Nagamine* case, *supra.*

Although the money spent to put the house in condition for rental clearly was not lost (*Mary Sogawa, ante,* p. 126), it might, in different circumstances, have been taken into account in determining whether or not the venture had resulted in a net gain. Here, however, it and all remaining expenses, which are considered to have been normal in the circumstances, were more than covered by the rents received; hence, additional compensation may not be awarded under the Act even though claimant's net gain, after he is compensated for the extraordinary damage and expenses, may be much less than he reasonably anticipated at the time he entered into the arrangement. *Toshiko Usui, supra.*