

CLAIM OF HARRY SUEKICHI NAKAGAWA

[No. 146-35-49. Decided June 1, 1951]

FINDINGS OF FACT

This claim, alleging a loss in the sum of \$4,630, was received by the Attorney General on November 19, 1948. It involves a loss incurred by reason of the forced abandonment of claimant's hunting and fishing equipment, 15 sled dogs, a photography printing and developing set, household furniture, gardening tools, and personal clothing. The claimant was born in Japan of Japanese parents on November 15, 1876. On December 7, 1941, and for some time prior thereto, claimant resided in the city of Tanana in the Territory of Alaska. On March 11, 1942, claimant was apprehended by the Federal Bureau of Investigation, acting under authority of Presidential Proclamation numbered 2525, dated December 7, 1941, as amended by Presidential Proclamation numbered 2533, dated December 29, 1941, and detained by the Army from that date to March 24, 1943. He was then transferred to the custody of the Immigration and Naturalization Service and interned at Santa Fe, New Mexico. He was released and permitted to return to Alaska on February 2, 1946. Claimant stated that on his return he was unable to locate most of the property for which he makes claim and such articles as he was able to recover were so damaged or deteriorated as to be wholly worthless. It would seem that the claimant acted reasonably in so abandoning his property, inasmuch as he further states that he was allowed no time to arrange for the sale or storage of same by the Federal Bureau of Investigation agent who apprehended him. The allegation is also made that he had been assured by the said agent that the property left be-

hind would be cared for by the authorities. None of the losses claimed have been compensated for by insurance or otherwise.

REASONS FOR DECISION

Section 1 of the Evacuation Claims Act of July 2, 1948, requires, among other things, that an eligible claimant be evacuated or excluded from a military area by the appropriate military commander; or if evacuated or excluded from the Territory of Alaska, said evacuation or exclusion must have been carried out under authority of Executive Order numbered 9066. See claim of *Sina Katsuma*, *ante*, p. 186. A further requisite of the Act, *supra*, is that the damage shall not have been due to action taken by a Federal agency pursuant to the Alien Enemy Statutes (Sections 4067, 4068, 4069, and 4070 of the Revised Statutes, as amended, 50 U. S. C. 21-24).

The claimant in the instant case having been apprehended by the Federal Bureau of Investigation acting pursuant to Presidential Proclamation numbered 2525, dated December 7, 1941, issued under authority of the Alien Enemy Statutes, *supra*, was clearly not evacuated or excluded from the Territory of Alaska pursuant to military orders issued under authority of the aforementioned Executive Order numbered 9066, as required by the Act. Moreover, since the damage incurred by claimant was due to action taken by a Federal agency pursuant to the Alien Enemy Statutes, compensation therefore is barred by Section 2 (b) (2) of the Act.

Claimant is therefore clearly ineligible to claim under the Act, *supra*, and his claim must be dismissed.

Section 3 (a) of the Act requires that the claimant be given an opportunity to be heard and to present evidence before a final determination is made upon his claim. It is noted that while the claimant has submitted his evidence informally and has requested expedition of the adjudication of his claim based upon the hardship of the cir-

cumstances in which he now finds himself, he has at no time filed a request for or a waiver of such a formal hearing. Accordingly, in order to afford the claimant an opportunity to request such a hearing, this adjudication shall not become final until 30 days after a copy thereof has been mailed to him and no such request is received during that period. In the event that the claimant, within the stated period, requests a formal hearing of his claim, this adjudication as herein set forth shall be vacated in its entirety and his claim will thereafter be considered in due course.