

CLAIM OF NIZO OKANO

[No. 146-35-2392. Decided September 27, 1950]

FINDINGS OF FACT

This claim, in the amount of \$619.23, was received by the Attorney General on April 11, 1949. The claim involves five different kinds of personal property loss, namely, loss from the sale of an automobile and household furniture; expenditures for storing family clothing and miscellaneous household effects; loss of canned foodstuffs stored with the latter and which subsequently disappeared; disbursements for transporting goods from private to government storage; and loss sustained through the gift of certain pictures. Claimant was born in Japan on September 22, 1896, of Japanese parents. At no time since December 7, 1941, has claimant gone to Japan. On December 7, 1941, claimant actually resided at 1903 Adair Street, Los Angeles, California, and he was living at that address when evacuated on May 9, 1942, under military orders pursuant to Executive Order No. 9066, to the Pomona Assembly Center, Pomona, California, and thence to the Heart Mountain Relocation Center at Heart Mountain, Wyoming. At the time of his evacuation, claimant could not take the above-described property with him to the relocation center and he accordingly sold the automobile and household furniture for the highest and best prices he could obtain. The fair and reasonable value of these items at the time of the sale was \$688. Because no free market was then available to claimant he realized only \$310 on the sale, sustaining a loss of \$378 thereon. In addition to selling his automobile and furniture, claimant packed his family clothing and household effects, together with certain canned foodstuffs, in 16

assorted and sundry containers which he stored in his landlord's garage in space adequate for this purpose but incapable of accommodating the items which he sold, and made a gift to his landlord of six framed Japanese pictures which he was unable to sell. The pictures were small in size, two being 10'' x 12'' and four 12'' x 15''. Early in 1943, while at the relocation center, claimant had his stored property transported from his landlord's garage to the WRA central warehouse in Los Angeles. The removal was at claimant's expense, as required by the WRA regulations then in effect. Claimant paid his landlord \$35, which was a reasonable amount, for the storage of his goods and their transportation to the WRA warehouse. Following the removal of his effects from private storage, claimant discovered that the canned foodstuffs, the fair value of which was \$25, were missing. Claimant has not been able to recover them since. Claimant would not have sold nor stored his property and would not have given away the pictures but for his evacuation. Claimant acted reasonably in the circumstances in selling and storing his property and paying for its storage and transportation. Claimant was married when evacuated and the property involved represented community estate of himself and his wife, Tamaki Okano. The latter, a person of Japanese ancestry, was evacuated with claimant and has never since December 7, 1941, gone to Japan. Claimant's losses, exclusive of the pictures, total \$438. The losses have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

The evidence of claimant's losses consists of his sworn statements together with written statements from two persons having knowledge of claimant's ownership of the property, both of whom attest to claimant's honesty and truthfulness and one of whom assertedly was present at the time part of the property was sold. The investigation revealed nothing to contradict this material, and

the WRA records corroborate claimant's statements concerning the original private storage of his household effects and their subsequent removal to the WRA warehouse. These records also establish that at the time of the removal, the expense of transporting property from private to government storage had to be borne by the evacuee and that the removal of claimant's goods was at claimant's expense.

A valuation of claimant's automobile and furniture in the sum of \$688 is reasonable. Of this amount claimant received \$310 as proceeds from the sale, leaving an uncompensated balance of \$378. Since claimant had no free market and acted reasonably in selling in the circumstances, the loss is allowable. *Toshi Shimomaye, ante*, p. 1. Similarly allowable, on the facts found, is claimant's loss from the disappearance of the canned foodstuffs, the reasonable value of which was \$25. *Akiko Yagi, ante*, p. 11. The \$35 expended by claimant for private storage and for transporting the family clothing and miscellaneous household effects to the WRA warehouse is likewise allowable. *Frank Kiyoshi Oshima, ante*, p. 24.

In this latter connection, it is appropriate to observe that the record is obscure as to the exact amounts allocable to the storage charges and transportation costs as separate and individual items, since claimant's testimony treats the \$35 expenditure merely as one lump-sum payment for both. On the particular facts involved, however, clarification of the obscurity becomes immaterial. As pointed out in the *Oshima* adjudication, *supra*, an expenditure for storage charges *per se* is reimbursible under the Act because it represents "an expenditure * * * made to prevent loss and for this reason partakes itself of the nature of a loss incurred to prevent a greater loss." *A fortiori*, therefore, claimant's expenditure for transporting his property from private to government storage must be recognized since the purpose of the outlay was to make for greater security of claimant's property and, even

more important, to enable claimant to avail himself of the free storage provided by WRA, thereby eliminating storage expense entirely.

Claimant's loss from the gift of the six framed Japanese pictures is not cognizable on the facts disclosed by the record. In justification of his act, claimant testified that he gave the pictures to his landlord because he could not sell them; furthermore, that he would not have given them away but for his evacuation. The record shows, however, that claimant had another alternative reasonably available to him; namely, inclusion of these six small items among the effects which he stored. Of course, for some unexplained reason, it might not have been possible for claimant to have stored the pictures and it might possibly have been that the gift to the landlord was in the nature of additional compensation for the storage space afforded and the services rendered by him. Claimant gave no such explanations, however, although afforded ample opportunity to do so and, further, interposed no objection to the tentative findings served upon him by the Field Office to the effect that the storage space was adequate to accommodate the pictures and that the disposition by gift was not reasonably required in the circumstances.

In summary, then, claimant is entitled to receive the respective sums of \$378 for the loss from the sale of his automobile and furniture, \$25 for the loss of his food-stuffs and the \$35 expended for storing and transporting his effects, or a total of \$438, under the above-mentioned Act as compensation for loss of personal property as a reasonable and natural consequence of his evacuation. This claim includes all interest of the marital community in the subject property since claimant's wife has filed no separate claim, although eligible to do so under the Act. *Tokutaro Hata, ante, p. 21.*