

CLAIM OF YOSHIO BERT SHIMOMAYE

[No. 146-35-269. Decided July 6, 1951]

FINDINGS OF FACT

This claim, alleging a loss in the sum of \$1,523.50, was received by the Attorney General on January 18, 1949. It involves a loss by reason of the sale of inventory, a truck with specially constructed chassis, and household furnishings; a loss on account of the abandonment of a hot water heater; a loss due to the gift of a radio with shortwave band; and a loss of accounts receivable incurred in the course of claimant's business, allegedly rendered uncollectible by reason of claimant's evacuation. Claimant, unmarried at the time the herein described losses were sustained, was born in Japan of Japanese parents. On December 7, 1941, and for some time prior thereto, the claimant actually resided at 3220 $\frac{1}{4}$ East 3d Street, Los Angeles, California, from which address he was evacuated on May 29, 1942, pursuant to military orders issued under authority of Executive Order No. 9066, dated February 19, 1942, and thereafter sent to the Colorado River Relocation Center at Poston, Arizona. At no time since December 7, 1941, has the claimant gone to Japan. Unable to take his property with him, the claimant acted reasonably in selling his truck, inventory, and household furnishings for the sum of \$1,750 although the fair and reasonable value thereof at the time of sale was \$2,560. After December 7, 1941, claimant, because he had heard that persons possessing shortwave radios might be arrested, gave his radio to a friend. The aforementioned hot water heater the claimant had purchased jointly with his landlord in order to assure himself of a supply of hot water during the period of his tenancy. However, it appears that an agree-

ment was entered into between the claimant and his landlord with respect thereto whereby on installation the heater became the property of the landlord.

Prior to his evacuation, the claimant operated, under the name of the Sun Chemical Supply Company, an itinerant general store on a truck with a chassis which he had had specially built for that purpose. He carried a stock in trade consisting of insecticides, cosmetics, patent medicines, small household items, clothing, and other miscellaneous articles which he sold to the farmers of Japanese ancestry in and around the Los Angeles area. It was his custom to sell these items on credit to the farmers in this locality who would thereafter make payment to the claimant upon the harvesting of their crops in the late spring or early summer. The claimant alleges that during the period prior to his evacuation he had outstanding 8 accounts receivable amounting in all to \$218; that by reason of his restriction to the area in which he resided and the happenstance of his subsequent evacuation, he was unable to make his rounds and collect the money due him on these accounts. After his release from the relocation center, claimant was unable to locate any of the farmers who were indebted to him. None of the aforementioned losses have been compensated for by insurance or otherwise.

REASONS FOR DECISION

The losses sustained on the sale of the claimant's stock in trade, truck, and household furnishings, in the sum of \$810, are allowable. *Toshi Shimomaye, ante*, p. 1.

The loss sustained by reason of the uncollectibility of claimant's accounts receivable is also allowable as a loss of property resulting from claimant's evacuation. It is well settled by both the Federal and state courts that accounts receivable are to be regarded as items of property. *Newport National Bank v. The Herkimer County National Bank*, 225 U. S. 178; *Pritchard v. Norton*, 106 U. S. 132; *State ex rel. Globe-Democrat Publishing Co. v.*

Gehner, 316 Mo. 694; *Sadler v. Pure Oil Co.*, 172 S. C. 220. The only question to be determined is whether the loss suffered by reason of the uncollectibility of these accounts receivable is a reasonable and natural consequence of the claimant's evacuation. It has been found as a fact that because of his restriction to the area in which he resided and his subsequent evacuation the claimant was prevented from visiting those of his customers in the general area surrounding Los Angeles who were indebted to him. Unable to effect payment in this manner, as was his custom in the past, these formerly liquid accounts receivable proved a total loss. Moreover, due to their dispersal after release from the relocation centers, recourse to any legal action would have been futile, inasmuch as after his return he was unable to locate any of the persons indebted to him. It is doubtful whether claimant, at that time, could have had any recourse to the courts in any case since more than four years (the California Statute of Limitations in actions of this type) had elapsed since the debt was incurred. It is unnecessary to consider herein whether the Statute of Limitations was suspended during the period of claimant's evacuation since the claimant was unable to locate any of the potential defendants. In such circumstances to require the claimant to enter into what would patently be fruitless litigation, and incur the expense incident thereto, would be unreasonable. We see no reason for imposing, as a matter of policy, the further requirement that a claimant exhaust his legal remedy before a claim can be considered under the Act, where from the facts it could reasonably be concluded that the result of such litigation, regardless of the outcome, would obviously be sterile.

The question arises as to whether the fact that the evacuation of the debtors may to some extent have been responsible for the loss should prevent full recovery since Section 1 of the Act authorizes the determination of claims by a "person * * * for damage to or loss of real or personal property * * * that is a reasonable and natural consequence of the evacuation or exclusion of *such*

person.” [Emphasis supplied.] Experience has proven that few of the losses sustained by evacuees would have been incurred if individual claimants had been singled out and evacuated alone, leaving family or friends behind to care for their interests. Cf. *Fumiyo Kojima, ante*, p. 209. It is obvious that much of the difficulty in obtaining fair prices for property that was sold was due to the enforced and practically simultaneous exodus of practically all persons of Japanese ancestry. It is possible that some of the loss herein sustained by reason of the uncollectibility of the accounts receivable would not have occurred if the debtors had not been evacuated and, by reason thereof, prompted to resettle in a different locality. However, there is nothing to substantiate the belief that there was intention on the part of the Congress to require this kind of speculation in the process of adjudication. Specifically, accounts receivable were undoubtedly among the assets of merchants who “had to dispose of their * * * business at sacrifice prices” (H. Rept. 732, 80th Cong., 1st sess., p. 2). Such losses were clearly contemplated by the Congress as within the “obligation of the Government.” *Ibid.* It is absurd to suppose that it was intended that such business should be evaluated for purposes of compensation, at the price that a buyer would pay, in the light of the diminution in the value of the business caused by the evacuation of all other persons of Japanese ancestry. It is enough, in a case such as the present one, that a causal relationship be established between the claimant’s evacuation and the loss sought to be compensated. This end the claimant has accomplished. When such a relationship has been established, the full loss is compensable and the award should not be reduced merely because the loss might have been smaller if the evacuation of other persons had not to some extent been responsible therefor.

Claimant’s accounts receivable amounted in all to \$218. Past history of the claimant’s business discloses that the claimant suffered little, if any, loss in the collection of his

accounts. However, the fair market value of these accounts receivable at the time of loss must be determined in order to fix the amount of such loss. *George M. Kawaguchi, ante*, p. 14. In view of the liquid character of these accounts, it can safely be assumed that the claimant, if desirous of selling these accounts receivable in normal times on the open market, would not, in all probability, have had to discount them for more than 10 percent of the face amount thereof. We therefore find that the fair and reasonable value of the claimant's accounts receivable at the time of loss was \$218 less \$21.80, or \$196.20.

No allowance can be made on account of the loss of claimant's radio since such loss was incurred by reason of the claimant's fear of arrest on account of the possession thereof and not because of his evacuation. *Shigeru Henry Nakagawa, ante*, p. 93. Nor can any allowance be made on account of the loss of the hot water heater since by virtue of the agreement between the parties such hot water heater on installation was actually the property of the landlord.