

CLAIM OF RAY YAMAMOTO

[No. 146-35-4248. Decided May 15, 1951]

FINDINGS OF FACT

This claim, alleging a loss in the sum of \$2,055.72, was received by the Attorney General on May 31, 1949. It involves a claim for fees paid to a bank for operation and management of claimant's real property, together with expenditures allegedly occasioned by vandalism to the said real property; a claim for sums spent by the bank for a night patrol service hired for the purpose of preventing such vandalism; a claim for expenditures made by the bank for maintenance of the real property; a claim for rent which the claimant alleges could not be collected because of his evacuation; and a claim on account of the loss caused by the theft of certain personal property which the claimant had stored in the basement of the aforementioned real estate, part of which was jointly owned by his parents as community property and another part of which was owned by his younger brother, Peter Keiji Yamamoto. The claimant and his brother, both unmarried, were born of Japanese parents as were the claimant's father, Sataro Yamamoto, and mother, Satono Yamamoto. All the aforementioned persons actually resided in the United States on December 7, 1941, and have not, since that date, gone to Japan. The claimant's father presently is, and has been, a mental patient at the Stockton State Hospital in California ever since he was committed thereto by the Superior Court of San Francisco on April 8, 1942. No guardian has ever been appointed to act for him. The claimant, his mother, and brother were living at 1856 Sutter Street, San Francisco, California, when they were evacuated on May 1, 1942, under military orders issued under authority of Executive Order No. 9066, dated February 19, 1942. They were

sent to the Tanforan Assembly Center and thereafter to the Central Utah Relocation Center in Utah.

The claimant was the owner of certain real estate known as 1720-22-24 Webster Street, San Francisco, California. Shortly prior to his evacuation, the claimant engaged the Anglo California National Bank of San Francisco to manage and operate these buildings during his absence. For this service, until the time he again assumed management of the property, the claimant paid to the bank the sum of \$324.82. In the basement of the aforementioned real property, the claimant stored his personal property, the community property of his parents, and certain articles of personalty belonging to his brother. The claimant has been authorized by his brother to claim as agent on his behalf. The basement was well boarded and securely locked. However, on three occasions thereafter the basement was broken into and all of the property that had been stored therein was stolen therefrom despite all the precautions taken by the bank to prevent such pilferage. In fact at a cost of \$1 a month the bank, after the first breaking and entering, hired a night patrol service for the purpose of preventing any further burglary. It is alleged that these repeated burglaries occurred because it had become known that the building was owned by a person of Japanese ancestry and that the property of several other Japanese had been stored in the basement thereof. The fair and reasonable value of claimant's property so stolen was \$29.26, of the community property \$22.50, and of the younger brother's property \$91.66. As a result of the breaking and entering, the bank expended, on behalf of the claimant, the sum of \$34.30 in repairs to the doors and locks of the building. Claim is made for the sum of \$97.50 on account of the loss of rental which sum represents the failure of a tenant to pay rent for three months at the rate of \$32.50 per month. Claimant also sets forth an item in the sum of \$531.55 for maintenance and repairs made by persons employed by the bank which the claimant states he could have made himself if he had been there to perform such labor.

None of the aforementioned losses have been compensated for by insurance or otherwise.

Claimant's mother died on January 28, 1950, leaving a will dated July 21, 1938, which will has not been offered for probate. The claimant has offered no explanation as to why the said will has not been probated. In the will no provision was made for the husband and all of her property was bequeathed to her sons share and share alike.

REASONS FOR DECISION

Each of the facts found is supported by legally acceptable evidence or independent information sufficient to warrant its stipulation in a court of law. Previous adjudications involving substantially the same circumstances and losses have clearly established the claimant's right to compensation in the amount hereinafter stated in the award, in accordance with the terms of the Act of July 2, 1948. Claimant may file a claim as the duly authorized agent of persons otherwise jurisdictionally eligible. *Taro Kenneth Takahashi, ante*, p. 183. See *Akiko Yagi, ante*, p. 11, for the allowability of the losses incurred by reason of the theft from storage. The sums expended for the patrol service and for the repairs which became necessary because of the breaking and entering are allowable, inasmuch as such expenditures were incurred in an effort to preserve the property stored and to prevent the further loss of such property. *Frank Kiyoshi Oshima, ante*, p. 24; *Kazuto Imanaka, ante*, p. 35; *Kinjiro and Take Nagamine, ante*, p. 78. Moreover, as concerns the patrol service, the loss would also be allowable by reason of the fact that a failure of consideration ensued, inasmuch as the said patrol service did not serve the purpose for which it was intended, namely, the prevention of further pilferage. *Shuzo Kumano, ante*, p. 148.

No allowance can be made on account of the \$324.82 paid by the claimant to the bank for managing his real property or for the sums expended by the bank for maintenance and repairs, all of which the claimant alleges he

could have accomplished himself but for his evacuation. It is cognizable that claimant's income from his real estate was diminished as a result of these expenditures but these expenditures were merely operating expenses and deductible from gross income. No evidence has been adduced that these expenditures resulted in an actual loss rather than a diminution of profit. *Toshiko Usui, ante*, p. 112. Nor can any allowance be made on account of the loss of rental since no showing has been made that such loss was in any way a reasonable and natural consequence of the claimant's evacuation. *Seiji Bando, ante*, p. 68.

The claimant and his brother may or may not have an interest in any award which may be made herein on account of damage to the community property owned by their parents, either as devisees under the will or as distributees of the estate of their mother. Inasmuch as no award can be made on account of the damage to the community property until such time as the said will is offered for probate, the issuance of a payment voucher will be delayed until the expiration of 30 days after a copy of this adjudication has been mailed to the claimant. If within the allotted period, the claimant or his brother causes the aforementioned will to be probated, or should said will be proven invalid, cause an administrator to be appointed for the mother's estate or cause a guardian to be appointed for the father's property then, although no determination is herein made as to the eligibility of claimant's father, in that event a separate determination will be made with regard to the \$22.50 allotted as compensation for the damage to the community property. If no action is taken by the claimant or his brother within the said 30 days, a voucher will then be issued for the payment of the award as herein made.

The loss attributable to claimant's brother's personalty in the sum of \$91.66 is paid to the claimant on behalf of and as agent for his said brother, Peter Keiji Yamamoto, and is included as a part of the amount herein awarded to the claimant.