

## CLAIM OF FRANK KIYOSHI OSHIMA

[No. 146-35-4367. Decided August 1, 1950]

## FINDINGS OF FACT

This claim was received by the Attorney General on June 1, 1949, and is in the amount of \$417, for the loss of personal property. The property which the claimant owned, and is involved in this claim, consists of one 1936 Ford, Fordor sedan, and one Martin guitar and case, and money expended for automobile storage charges. The claimant was born in San Bernardino, California, on October 23, 1920, of Japanese parents. On December 7, 1941, and for some time prior thereto, claimant actually resided at 572 North Mt. Vernon Avenue, San Bernardino, and was evacuated from this address on May 23, 1942, under military orders, pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to the Colorado River War Relocation Project, Poston, Arizona. At no time since December 7, 1941, has the claimant gone to Japan. Claimant was unmarried when evacuated. Claimant purchased the Ford sedan, used, some time in 1940, for \$445. Claimant paid \$100 down and turned in his old 1931 Ford. Claimant made small monthly installment payments and completed paying the balance due in early 1941. In May 1942, when he was evacuated, claimant stored his automobile with Mr. Joseph Neri of 8th Street, San Bernardino. From May 1942 to November 1942 claimant incurred, and paid, storage charges of \$42, which were reasonable. In November 1942 claimant sold the automobile for \$175, cash, because he could no longer afford to continue to pay the storage charges. Claimant purchased a Martin, Spanish type, grand auditorium size, guitar in July 1941 for \$90, cash, and a second-

hand guitar case for \$20 cash. In May 1942, just a few days prior to his evacuation, claimant sold this guitar and case for a total price of \$35, cash. Claimant sold the guitar and case because he had no place to store them and they were too bulky to carry to the relocation center. At the time of these sales, there prevailed a condition wherein there was not a free market on which the claimant could have sold these things, but he acted reasonably in selling them as he did also in storing his automobile. The reasonable, fair value of the guitar and case was \$100, and the car \$330, at the time they were sold.

#### REASONS FOR DECISION

The principal evidence on behalf of claimant was his sworn statement. The investigation revealed nothing to the contrary, and, in part, corroborated claimant's statements. In addition, claimant produced a signed receipt showing payment of the storage charges of \$42. The fair, reasonable value of the claimant's 1936 Ford sedan and guitar and case when he sold them was \$430. Claimant received on the sale of his automobile \$175 and \$35 for his guitar and case. Such a loss on sale is in the circumstances allowable. *Toshi Shimomaye, ante*, p. 1.

The only novel question presented by this claim is claimant's claim for \$42 for the storage of his car for the first six months after his evacuation. The Act allows 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 \* \* \*." There can be no question on the facts found that claimant's evacuation was the proximate cause of his expense in storing the car. Claimant states in his Affidavit (at p. 3):

I drove this car until May 23, 1942, when I was evacuated. I did not wish to sell my car when I was evacuated, so I stored it with my friend, Mr. Joe Neri, and paid him \$7 a month for such storage. After a few months I realized that I could not afford to continue

to pay these storage charges, so I wrote Mr. Neri and asked him to try to find a purchaser for the automobile. Mr. Neri did find such a purchaser, a Mr. Munoz, a Mexican.

The above statement contains all the available facts on why claimant stored his car. It does not appear whether claimant paid garage rent before evacuation, but obviously claimant would not have incurred the cost of storage but for his forced evacuation. His only clear motive was to preserve his car, if possible, until the war or the emergency affecting his people should be passed. The first question, then, is whether "loss of \* \* \* personal property" includes the expenditure of money, where the money would not have been spent except for the evacuation, but where the claimant receives in return for it a useful service, as here. The nature of the service was such, however, that claimant received from it no increase of wealth or enjoyment, for its sole purpose was to preserve to the claimant his property in the only way which was available to him. As was said in *Toshi Shimomaye, supra*, the word "loss" would be strictly and unrealistically construed in the light of the intent of Congress, if it were limited to the loss of tangible property and incorporeal property rights. An expenditure to preserve or salvage property which would otherwise have to be sold at a disadvantage or abandoned is made to prevent loss and for this reason partakes itself of the nature of a loss incurred to prevent a greater loss. It is no distortion of the Act's intendment, therefore, to treat it as a "loss" within the meaning of the Act. That all such expenditures would not be allowable is pretty clear and the very reason for the expenditure suggests the logical limitation on the allowable extent of such "losses." Here, however, the claimant stored for only six months, at a cost of \$42, before he sold his car for \$175. Situations may well occur in which the claimant by making such expenditures for storage will mitigate not only his own loss but the loss of the Government under this Act. It is

unlikely that the claimant's intention was affected by any such consideration, and, indeed, this is immaterial, as likewise are his reasons for storing except in so far as they reflect the reasonableness of his act. If the first premise be accepted as established, therefore, that such an expenditure properly constitutes a "loss" of personal property, there remains the further question whether such an expenditure was the "reasonable and natural consequence"—the qualifying adjectives must not be overlooked—of claimant's evacuation. Did he, in other words, use due diligence in the circumstances? This minor premise must also be established before proceeding to the conclusion that an allowable loss was sustained. It was well known at the time that the Government would store cars for evacuated persons only in the open, where they were subject to rapid deterioration, much greater than would have been the case if the cars had been used constantly and parked on the street. *Report of the Federal Reserve Bank of San Francisco \* \* \* on its Operations in Connection with Evacuation Operations \* \* \* during 1942*, pp. 17-19, exh. 69. Claimant may well have known this. He may even have known something also of the peculiar problem which the Federal Reserve Bank had in its storage of evacuated persons' cars, a problem which it finally resolved in the late fall of 1942 by selling to the Army under the requisition of the military authorities all such cars still in the bank's possession. *Ibid.*, p. 18. His evidence does not reveal any more precise motive than that he did not wish to sell his car when he was evacuated. It is possible that he hoped he could weather the period of evacuation and still have his car, and this seems the most likely guess; or that he foresaw a rise in the market for cars as the war went on and a subsidence of the glut of used cars in the market, created by the evacuation. His motive in storing, whether simple or complex, is not relevant unless it was unusual, eccentric and not what an ordinarily prudent man in his circumstances would have

done. It cannot be said that he had a duty to sell his car before his evacuation, and since this is so, it cannot be said that he acted unreasonably in the circumstances in storing it. Prudential reasons dictated his act. The facts of the general situation justify it. Most persons in like circumstances would have stored their goods if possible, and failing that, have sold them, and only as a last resort, have abandoned them. The cases illustrate this. If claimant's act in storing the car would not have been done except for his evacuation, and if this act was not in itself unreasonable, it follows on the premises laid down that his doing so, with its attendant cost, was the reasonable and natural consequence of his evacuation, and the cost of storage was therefore allowable as a "loss" under the Act. The claimant is entitled to receive the amount of \$262 as compensation for loss of personal property as a reasonable and natural consequence of his evacuation.