

CLAIM OF TOKUTARO HATA

[No. 146-35-4522. Decided July 15, 1950]

FINDINGS OF FACT

This claim, in the amount of \$462.50, was received by the Attorney General on June 7, 1949, and concerns a loss resulting from the sale of personal property owned by claimant and described as a 1935 De Soto 4-door sedan, a boy's bicycle and five rugs. Claimant is a married man living with his spouse, and the property in question was purchased and sold by claimant as community property during his marriage. Claimant's wife was Kiyō Hata, a person of Japanese ancestry, who was evacuated with her husband on April 29, 1942, and has never since December 7, 1941, gone to Japan. Claimant was born in Japan, of Japanese parentage, on December 6, 1884. At no time since December 7, 1941, has claimant gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 2239 Pine Street, San Francisco, California, and was living at this address when he was evacuated on April 29, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Tanforan Assembly Center, California, and from there to the Central Utah Relocation Center at Topaz, Utah. At the time claimant was evacuated he was not permitted to take the above-mentioned property with him to the Relocation Center, and between April 20, 1942, and April 29, 1942, he sold the property for the highest prices that he could obtain. Claimant's decision to sell the property rather than to store it was reasonable under the circumstances which confronted him. Because of the conditions prevailing at the time, the claimant did not have a free market in which he could sell his property for a fair price, and was unable to realize more than \$62.50 from the sale. The fair and reasonable value of claimant's property at the time of sale was \$390.60; and claimant therefore sustained a loss of personal property in the

amount of \$328.10, which loss was a reasonable and natural consequence of his evacuation and has not been compensated for by insurance or otherwise.

REASONS FOR DECISION

The evidence of claimant's loss consisted almost entirely of his own sworn statements. He had no records or memoranda showing where the above-mentioned items were purchased, or what they cost, and his recollection concerning the automobile and rugs was too vague to provide any basis for their investigation. Claimant did recall that the bicycle was purchased for cash in June 1941, at Weinstein's Department Store, San Francisco, for a price between \$40 and \$55. Inquiry at Weinstein's revealed that they had preserved no sales records for the year 1941, and consequently were unable to provide any information about the transaction. The claimant's possession of the automobile, bicycle and rugs around the time of his evacuation was, however, corroborated by a family friend. Under these circumstances, it appears reasonable to conclude that the claimant did in fact own the property.

It has been found as a fact that exclusion orders prescribed certain kinds of things which an evacuated person should take to assembly centers or relocation centers and limited all other personal property to what could be carried by hand. See *Akiko Yagi, ante*, p. 11. Claimant was, therefore, required either to store or to sell the above-mentioned property. Claimant stated in his affidavit that he decided against storage because of the expense, risk, and uncertainties involved. This decision was reasonable, especially in regard to the automobile and bicycle, which might deteriorate rapidly in long-continued storage. It was known that the Government provided only outdoor storage for automobiles, and that evacuated persons were advised at registration centers to sell their automobiles if possible. They were absolutely prohibited from taking them to relocation centers, See *Report of the Federal Reserve Bank of San Francisco * * * on its Operations in*

*Connection with Evacuation Operations * * * during 1942*, pp. 17-19; and exhibits 68 and 69. Claimant was 58 years of age at the time of his evacuation, and, with no means of determining the probable duration of military control, had no assurance of ever returning to his former residence. Under these circumstances, claimant was not imprudent in selling the property for ready cash, even at a substantial loss.

It is apparent that from the sale claimant realized substantially less than the fair and reasonable value of the property. But it is common knowledge that at the time of the sale there were thousands of Japanese in the area concerned who were in the same predicament as the claimant, and that many had decided, as he did, to sell their property. Prospective buyers were aware of this situation and took advantage of it to purchase at abnormally low prices. This is a familiar factual pattern in evacuation claims, and nothing disclosed in the evidence and investigation suggests that the instant claim does not fall squarely within it. In these circumstances such a loss by sale is allowable. *Toshi Shimomaye, ante*, p. 1.

Physical inspection of the property was impossible, since it could not be found. Upon the evidence available, a valuation in the amount of \$390.60 is reasonable. Claimant received \$62.50 from the proceeds of sale. Consequently, claimant sustained a loss in the amount of \$328.10, and is entitled to receive this sum under the above-mentioned Act, as compensation for a loss of personal property which was a reasonable and natural consequence of his evacuation.

This claim includes all interest of the marital community in the subject property, since the wife is jurisdictionally eligible to claim for her interest in the community property but has made no claim, and since the husband under California law has the power of management and control of the community personal property, *Deering's Civil Code of California* (1949), § 172; and may therefore claim for the whole.