

## CLAIM OF USASUKE CHARLIE YAMAMOTO

[No. 146-35-54. Decided October 4, 1950]

## FINDINGS OF FACT

This claim, in the amount of \$2,258, was received by the Attorney General on the 22d day of November 1948, and concerns an alleged loss resulting from sale of certain business equipment owned as community property by claimant and his wife. It also concerns an alleged loss resulting from the involuntary abandonment of certain household goods owned as community property by claimant and his wife. Claimant was born in Wakayama Prefecture, Japan, of Japanese parents, on January 21, 1874, and at all times hereinafter mentioned was a citizen of Japan. Claimant's wife, Umayo Yamamoto, nee Okamoto, was born in Wakayama Prefecture, Japan, of Japanese parents, on February 17, 1889, and at all times hereinafter mentioned was a citizen of Japan. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 1415 Ellis Street, San Francisco, California, and were living at said address when evacuated on or about May 10, 1942, under Civilian Exclusion Order No. 41, issued May 5, 1942, pursuant to Executive Order No. 9066, dated February 19, 1942. Claimant and his wife were sent to the Tanforan Assembly Center at San Bruno, California; thence to the Central Utah Relocation Center at Topaz, Utah; and later to the Tule Lake Relocation Center at Tulelake, California. At no time since December 7, 1941, has claimant or his wife gone to Japan. At the time of the impending evacuation of claimant and his wife, they were not permitted to take said business equipment or household goods with them to the relocation center. On April 16, 1942,

claimant sold all of said business equipment for the sum of \$200, which was the highest price that he could obtain. Claimant's decision to sell said property rather than to store it was reasonable under the circumstances which confronted him. Because of conditions prevailing at said time, over which neither the claimant nor his wife had any control, claimant was unable to realize more than \$200 from said sale. Claimant attempted to store said household goods but was unable to find a suitable place. Claimant then attempted to sell said household goods but was unable to do so. Claimant's failure to store or to sell said household goods was not caused by any negligence on his part or on the part of his wife. Claimant and his wife were required to abandon all of said household goods on the day of their evacuation and have never recovered any of said property or received any compensation for it. The abandonment of said property was reasonable under the circumstances which confronted the claimant and his wife. The fair and reasonable value of the business equipment sold by the claimant for \$200, as of the time of sale, was \$616.23; and the fair and reasonable value of the abandoned household goods, as of the time of abandonment, was \$405. Claimant and his wife sustained an aggregate loss of personal property in the amount of \$821.23, which said loss was a reasonable and natural consequence of their evacuation and has not been compensated for by insurance or otherwise.

#### REASONS FOR DECISION

The evidence of claimant's loss, with respect to the business equipment sold, consisted, in addition to his own sworn statements, of corroborative information obtained from the person who sold him the greater portion of said equipment and from the person who purchased all of it from him. The latter, a Chinese named Theobald Gee, also confirmed claimant's testimony concerning the price received. Therefore, decisive proof of owner-

ship and of proceeds of sale was obtained with respect to the business equipment. The evidence pertaining to the alleged abandonment of household goods consists, in addition to the sworn testimony of the claimant, of corroborative information received from the person who obtained said goods after their abandonment, the aforesaid Theobald Gee, who on taking over the business also moved into claimant's former living quarters. The claimant avers in his aforementioned sworn statement: "On leaving the premises for the Tanforan Assembly Center, I told Mr. Gee that I had to abandon my household goods and that he could take them if he so desired. However, I have never received any payment for this property from Mr. Gee or recovered any of the items." Gee some time thereafter entered the military service and while so absent from the premises had all of the property sold for him through an agent. He was unable to furnish any information concerning the purchaser or the present location of any of the property; confirmed claimant's testimony concerning the items involved with one exception, and admitted that he never gave the claimant any payment or consideration for them. The exception concerns a davenport, as to the receipt of which he had no recollection. However, he would not deny that such an item was included. In view of the claimant's sworn and positive testimony, it may reasonably be found that such a common article was part of his household equipment and was abandoned with the rest.

At the time of claimant's impending evacuation, military instructions prohibited evacuees from taking bulky articles, such as those sold by claimant, to relocation centers. The tenor of these orders was that evacuees could take with them only such property as could be carried by hand. (See Instructions to Civilian Exclusion Order No. 41, Headquarters Western Defense Command, May 5, 1942; Dept. of Int. booklet, *Wartime Handling of Evacuee Property*, p. 36). Therefore, claimant was

required to either store or sell said business equipment. Claimant stated in his affidavit that he decided against storage not only because of the expense involved and the uncertainty of ever resuming business, but also because his family needed ready cash. It is considered that this decision was reasonable under the circumstances which confronted the claimant. Consequently, the claimant was not imprudent in selling said property, even at a substantial loss. Claimant realized substantially less than the fair and reasonable value from the sale. However, it is common knowledge that at the time of said sale there were many Japanese in the area concerned who were in the same predicament and that many had decided, as he did, to sell their possessions. 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 or investigation suggests that the instant claim does not fall squarely within it. On the facts found, such a loss by sale is compensable under the Act. See *Toshi Shimomaye, ante*, p. 1.

The compensability of the loss sustained by claimant and his wife as a result of the abandonment of household goods presents a more difficult question. The Act requires that a loss, to be allowable, must have been "a reasonable and natural consequence" of the claimant's evacuation. Such language places upon the claimant the burden of proving that his abandonment of said property was reasonable under the circumstances which confronted him. Abandonment involves total loss and ordinarily a reasonable man does not abandon his property if he can possibly obtain any price or consideration for it. This is another way of saying that one of the requisites in satisfying the test of "reasonable and natural consequence" under the Act is proof that the claimant made a diligent effort to minimize his loss. Only exceptional circumstances will justify a finding that the claimant

acted with reasonable prudence in abandoning his household goods.

However, it is considered that the circumstances affecting the claimant herein were in truth exceptional and thus justified the abandonment. Until a very short time before his evacuation, the claimant had every reason to believe that he would be permitted to store said property on premises owned by Mr. Y. Tanaka, a close friend. This fact was confirmed by a written statement received from Mr. Tanaka. Claimant's sworn testimony that he was unsuccessful in finding another place of storage is plausible, in view of conditions known to have existed at that time. Since nothing disclosed by the evidence or the investigation contradicts this part of the testimony, it is considered as adequately proven. Claimant's testimony that he was unable to sell said household goods is not implausible because it is known that many Japanese who sold such property had arranged to do so in advance of actual evacuation, although generally retaining possession until the last moment. It is quite likely that dealers and junkmen in the claimant's neighborhood had a surfeit of household property on hand or had agreed to buy all that they wanted by the time the claimant undertook to sell his goods between May 8th and May 10th, 1942. The aforesaid Theobold Gee confirmed claimant's testimony that on the day he was evacuated he sought to sell the goods to Gee for whatever price he was willing to pay. Therefore, some corroboration of claimant's testimony that he was unable to sell this property was obtained. In the absence of evidence to the contrary and in view of conditions known to have prevailed at the time concerned, it is considered that claimant's sworn statements concerning the circumstances which required the abandonment of his household property are worthy of belief. This conclusion is fortified by the inference which may be drawn from the natural desire of any sane person to avoid material loss. Therefore, it is held that the evidence proves that the claimant was

placed in a position which justified the abandonment of his household property.

The evidence discloses that all of the property involved in this claim was property of the marital community. However, claimant's wife has not filed a claim for her interest. Under these circumstances, the claimant, as husband, may file on her behalf under California law since he has "the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate," with exceptions not here pertinent. *Deering's Civil Code of California* (1949), § 172. Therefore, this claim includes all interest of the marital community in the subject property. See *Henry Sunao Uyeda, ante*, p. 9.

It was not possible to inspect any of the subject property since none of it could be located. Upon the evidence available, a valuation of all of said property in the amount of \$1,021.23 is reasonable. Claimant and his wife received the sum of \$200 from the sale of a portion of said property. Consequently, claimant and his wife sustained a loss of \$821.23 and are 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 their evacuation and which has not been compensated for by insurance or otherwise.