CLAIM OF MASAKI MIYAGAWA

[No. 146-35-1387. Decided June 21, 1951]

FINDINGS OF FACT

1. This claim, in the amount of $582.50, was received by the Attorney General on March 11, 1949. It involves loss through expenditures for the rent of claimant's residence and place of business and for repairs on his shoe repair machinery, and loss through theft of two fishing poles and two reels. The property involved in this claim was the community property of claimant and his wife. Claimant was born in Japan on January 11, 1880, of Japanese parents. His wife, Matsushita Miyagawa, was also born in Japan of Japanese parents. At no time since December 7, 1941, has either claimant or his wife gone to Japan, until May 1950 when both returned without obtaining a reentry permit and with the intention of taking up permanent residence there. Their removal was without Government aid or compulsion. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 2608 Sutter Street, San Francisco, California, and were living at that address when both were evacuated on April 28, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to the Tanforan Assembly Center in California and from there to the Central Utah Relocation Center at Topaz, Utah.

2. Because of his impending evacuation, claimant stored the fishing poles and reels in the portion of the building which had been occupied continuously by him since 1916 as a place of residence. All doors and windows were securely locked by him and when the shop, which was the first of five rooms used by him, was later rented by his

permission, the door communicating with the shop was boarded up. When he returned he found another family occupying all 5 rooms and his 2 fishing poles and reels were gone. Claimant, exercising due diligence, was unable to recover this property or to identify the person who took it.

3. Claimant when leaving to go to the Tanforan Assembly Center left his shoe repair machinery in the portion of the building that had been continuously used by him as a shoe shop since 1916 and the entrance to the shoe shop was securely locked. For a number of years before his evacuation, claimant had paid an annual rental for the five rooms, the first of which was used as a shoe shop, of $17 a month or $204 a year. He made an agreement with the owner of the building to pay a fixed rental of $100 per annum for the 5 rooms during his absence, expressly reserving to himself the right of reentry on his return, and paid rent accordingly of $342.50 for the 3½ years from April 26, 1942, to October 26, 1945. He returned from the Relocation Center on September 26, 1945, and made his reentry in the building about the middle of October. About 1 year before claimant's return from the evacuation center, the owner, with claimant's permission, sublet the shoe shop alone, together with the right to use claimant's shoe repair machinery, to various third parties and retained the income therefrom. Claimant consented to this arrangement because the owner was insisting upon a larger rental and the claimant desired to protect his right of reentry upon his return. San Francisco is a very compact city and building space there is extremely limited. Claimant acted reasonably in agreeing to pay the rental asked in order to preserve his rights in the place and also in agreeing to the lease by the landlady to third persons of his shoe shop, including the use of the shoe repair machinery.

4. Tenants of the shoe shop misused and damaged some of the machinery which cost the claimant $60 for the repair of his stitching machine and $50 for the repair of his

sewing machine. Claimant acted reasonably in making these repairs.

5. The loss of $50 on the fishing poles and reels, of $110 on machinery repair, and of $342.50 on the rental to retain his right of reentry constitute an aggregate loss of $502.50 not compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant was eligible to claim. This claim includes all interest of the marital community in the subject property, since the wife also is eligible to claim but has made no claim; and the husband having the power of management and control of such property under California law, may claim for the whole. *Tokutaro Hata, ante,* p. 21.

Claimant and his wife intended to depart for Japan immediately after the field conference and did so, but without Government aid or compulsion. They obtained no permit of reentry and expressed the intention of residing permanently in Japan, but this fact is immaterial and the claimant is not barred by Section 2 (b) (1). *Kumahichi Taketomi, ante,* p. 162.

On the facts found in paragraph 2, claimant is entitled to recover. *Akiko Yagi, ante,* p. 11.

On the facts found in paragraph 3, the amount paid as rental for the shoe repair shop of $342.50 is allowable. It is now common knowledge that "All property problems were handled on a purely voluntary basis and the evacuees were encouraged at all times to make such arrangements as they might desire with respect to their properties." *Report of the Federal Reserve Bank of San Francisco * * * on its Operations in connection with Evacuation Operations * * * during 1942,* p. 13. Claimant had occupied the same quarters since 1916 and had paid $204 a year as rental for some years before his evacuation. The evidence is not wholly clear upon the point, but it would appear that claimant had a 1-year lease for a rent fee of $100 with a right of renewal, or to put it as claimant did at the field conference: "Mrs. Marshall agreed to hold the

premises for me until such time as I could return." (Tr., pp. 4, 11.) About a year before his return, that is, about September 1944, his landlady wrote and asked him if he would allow her to rent the cobbler's shop since she was losing money on the arrangement, the additional rent to go to her. The shop was therefore rented to several persons in succession, the last being the persons whom claimant found upon his return occupying not only the shop but the four rooms in the rear used for living quarters. Since the front room had been occupied by claimant since 1916 as a cobbler's shop, he felt, not unnaturally, that the continuance of the shop in one place for 26 years had created for his business, represented by his lease, a considerable value and this he was loath to sacrifice. In other words, long continued custom had given to his lease of a good site in a crowded city an added value. He had made an average gross income before his evacuation of $200 a month from his trade. His act in paying the rental was, therefore, in every sense reasonable. The only question is whether the expense of the rental constitues a "loss" allowable under the Act.

Enough has been said to show plainly that the expenditure for rent was incurred to preserve a lease which claimant regarded as a valuable property interest, essential to him in the earning of his livelihood. San Francisco, like the oldest part of New York City which lies on Manhattan Island, is severely restricted in its growth by natural barriers, a fact of which judicial notice may be taken and, as a consequence, space in the city is limited and valuable. The legislative history of the Act indicates that Congress was aware that "Valuable leasehold interests had to be abandoned" and that compensation for losses thus sustained was considered to be within the recognized "obligation of the Government" and, hence, were property losses within the coverage of the Act. See 80th Cong., 1st sess., H. Rept. No. 732, p. 2, on H. R. 3999. Accordingly, if the claimant had been unable to preserve his leasehold,

his claim for its loss would have been allowable under the Act. *Toshichi Nakamura, ante,* p. 108. As was said in *Frank Kiyoshi Oshima, ante,* p. 24, it is no distortion of the Act's intendment to treat as a "loss" an expenditure to preserve or salvage property since it "for this reason partakes itself of the nature of a loss incurred to prevent a greater loss."

Although the rule there laid down that the cost of salvage, if it exceeds the value of the thing salvaged, shall not be allowable, requires some examination of the value of the property interest in question, it is not necessary here to determine the precise value of the lease, but only that its value was in excess of $342.50, the salvage cost. This, of course, is not to say that, if the payment here involved actually had exceeded the value of the property preserved, the excess could not have been treated as a direct loss. Cf. *Shuzo Kumano, ante,* p. 148. There is no need to consider that question here and nothing stated herein will prejudice its consideration in a proper case.

On the facts found in paragraph 4, the cost of repair work is allowable. *Kinjiro and Take Nagamine, ante,* p. 78. The claimant testified that a former tenant had so misused the machines that substantial repair was necessary and although he testified from no knowledge of the fact but from an inference drawn from the condition of the machines, such an inference is reasonable in the circumstances; and in any event, the fact of the poor state of the machines on claimant's return, as compared with their state when he was evacuated, is enough to support the claim whatever the intervening factors. He received none of the rent, it should be noted, which accrued to the owner from the "sublease."