

CLAIM OF JUNICHI FRANK SUGIHARA

[No. 146-35-178. Decided October 20, 1950]

FINDINGS OF FACT

This claim, in the amount of \$3,026, was received by the Attorney General on January 3, 1949, and involves personal property loss through both sale and payment of storage charges. The claim originally also included an allegation of loss in the sum of \$2,575 representing an unpaid balance on the sale of a hotel, but this item was withdrawn by claimant of his own volition, on the advice of his counsel. Claimant was born in Japan on April 15, 1884, of Japanese parents, and has at no time since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 3612 Folsom Street, Los Angeles, California, in property owned by his daughter, and was living at that address when evacuated on May 9, 1942, under military orders pursuant to Executive Order No. 9066, to the Pomona Assembly Center, and from there to the Heart Mountain Relocation Center in Wyoming. At the time of his evacuation, claimant was not permitted to take the property herein involved, namely, his household furniture and furnishings, with him to the relocation center. Shortly before his evacuation, therefore, he proceeded to store all of the property except for the very large pieces, i. e., the piano, living room suite and dining room set, with a private storage company at a monthly storage rental. Because he considered the cost too high to make storage of the large pieces practicable, claimant sold the latter for the best prices he could obtain. At that time a condition prevailed wherein a free market was not available to claimant for disposing of his property at its then fair value,

namely, \$300, and claimant received only \$90 from its sale, with resultant loss of \$210. Claimant would not have sold nor stored his property but for his evacuation, and his respective acts of selling and storing were reasonable in the circumstances. On July 26, 1943, claimant was granted leave of indefinite duration from the Heart Mountain Relocation Center to relocate in Salt Lake City, Utah. Claimant continued on indefinite leave status until the revocation of the mass exclusion orders, going from Salt Lake City to Chicago, Illinois. Because his relocation was on a temporary basis only, claimant continued the storage of his goods until such time as he might be permitted to return to California. On the lifting of the exclusion orders on January 2, 1945, claimant and his family sought to return to their home, but were unable to do so prior to June 1945 because the tenant to whom they had rented the house on the eve of their evacuation refused to move. In consequence of this fact, claimant continued the storage of his property beyond January 2, 1945, and until June 8, 1945, paying a total of \$246.60 for storage for the entire 3-year period involved. Claimant acted reasonably in the circumstances in storing his goods to June 8, 1945, and in paying for such storage; moreover, the payment was in reasonable amount. Claimant was married when evacuated and the property involved represented community estate of himself and his wife, Sueno Sugihara. The latter, a person of Japanese ancestry, was evacuated with claimant and has at no time since December 7, 1941, gone to Japan. The losses involved have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant's \$210 loss on sale is allowable. *Toshi Shimomaye, ante*, p. 1. On the facts found, the \$246.60 expended by claimant for storage of his property is likewise allowable. *Frank Kiyoshi Oshima, ante*, p. 24. It is true, of course, that claimant was granted indefinite

leave from the relocation center on July 26, 1943. Because he could not return to Los Angeles until the effective date of revocation of the mass exclusion orders and did not relocate on a permanent basis in the interim, it is clear that claimant is entitled to the storage expenditures for the period up to January 2, 1945. Moreover, since his inability to return to his home until the tenant had vacated was likewise a proximate consequence of his evacuation, it is equally clear that claimant's additional loss for the period from January 2, 1945, to June 8, 1945, is compensable.

In this connection, it should be noted that in his claim form claimant lists his total loss as \$3,026 and, in addition, designates a specific amount as his loss from the sale of the piano, living room suite and dining room set on the one hand, and the storage of the remainder of his property on the other. The specific amount given in the claim form as having been paid for storage is "\$186." The records of the storage company establish, however, that claimant in fact paid \$246.60 for the storage involved. Since claimant listed the amount as only \$186, it is clear that there is a variance between allegation and proof. As pointed out in *Kiyoji Murai, ante*, p. 45, however, a variance consisting solely of the matter of particularity is not material if its effect is not to increase the total loss established to an amount in excess of the total originally claimed. Since these considerations are applicable to the instant case, allowance of claimant's storage loss in the full amount expended is proper.

For the reasons stated, claimant is entitled to receive the sum of \$456.60 under the above-mentioned Act as compensation for loss of personal property as a reasonable and natural consequence of his evacuation. This claim includes all interest of the marital community in the subject property since claimant's wife has not made separate claim, although eligible to do so under the Act. *Tokutaro Hata, ante*, p. 21.