

## CLAIMS OF PAUL HONDA AND RIKU KUSUNOKI

[Nos. 146-35-751 and 752. Decided July 6, 1951]

## FINDINGS OF FACT

These claims alleging losses of \$2,114 and \$395, respectively, were received by the Attorney General on February 23, 1949. Both claims arise out of the same state of facts and involve losses occasioned by the sale at auction of claimants' property by officials of the WRA while the said property was in their custody. Claimant Riku Kusunoki and her former husband, Masatake Honda, were both born in Japan of Japanese parents. Claimant Honda, the son of the other claimant herein and Masatake Honda, was born in San Francisco, California. On December 7, 1941, claimant Kusunoki, her former husband, and claimant Honda resided at 2621 Sutter Street, San Francisco, California, from whence they were evacuated on May 10, 1942, pursuant to military orders issued under authority of Executive Order No. 9066, dated February 19, 1942. They were sent to the Tanforan Assembly Center and thereafter to the Topaz Relocation Center in Utah. At no time since December 7, 1941, has either claimant gone to Japan. The claimant Kusunoki's husband died while at the Topaz Relocation Center on September 23, 1943, intestate, leaving no debts and an estate valued at less than \$1,000. Shortly prior to evacuation, the claimant's husband packed their personal property, including the community property owned by himself and his wife, and personal effects of the claimant Honda in 7 trunks and boxes and stored same in the Buddhist Church at 1881 Pine Street, San Francisco, California. Some time after the death of her husband, and on or about February 16, 1944, the claimant Kusunoki,

on indefinite leave status, left the relocation center and took up residence in Boston, Massachusetts. In August of 1945, the officers of the aforementioned Buddhist Church, in order to make room for temporary dormitory accommodations for returning evacuees, turned over custody of all evacuee property stored therein to the WRA which thereupon transferred such property to a commercial warehouse in San Francisco. Neither of the above claimants was aware of such transfer nor was either of them at any time thereafter notified thereof. At a later date, the WRA attempted to locate the owners of all unclaimed evacuee property in their custody and claimant did in fact receive notice stating in effect that all unclaimed evacuee property still in their custody on a certain date would be sold at public auction. Claimants, however, in the mistaken belief that their property was still stored in the Buddhist Church, ignored such notice. Thereafter, on April 28, 1946, in accordance with the regulations then in effect, the WRA caused unclaimed lots of evacuee property to be sold at public auction. The 7 trunks and boxes containing the claimants' property were sold, as Lot No. D-328, for \$100 which sum was placed in a special trust receipt account, United States Treasury, where on proper application and proof of entitlement the claimants may receive their proportionate shares thereof. The claimants learned of the sale of their property in September 1946 when another member of their family returned to California and inquired at the Buddhist Church concerning the property in question. The fair and reasonable value of the claimants' property at the time of loss, for which claim is herein made, amounted to \$910.75. From the sale at auction, the sum of \$100 was realized leaving a compensable balance of \$810.75. It is to be noted that the claims herein consolidated were submitted simultaneously.

None of the aforementioned losses have been compensated for by insurance or otherwise.

At the informal hearing in support of claimant Kusunoki's claim, she requested that her claim be amended to include six pairs of lace curtains and two comforters having a fair and reasonable value at the time of loss of \$22. These items had been stored in the church with the other property but the said claimant had forgotten to include them in her original claim.

#### REASONS FOR DECISION

The evidence of loss consists of the sworn testimony of both claimants and other corroborative matter confirming the facts hereinabove found. Investigation has revealed nothing to the contrary and such facts therefore stand un rebutted. For the allowability of loss of personal property bailed to or in the custody of the Government or any agent thereof, see *Yasuhei Nagashima, ante*, p. 135.

Inasmuch as claimant Kusunoki's amendment to her claim is merely one of particularity, such amendment is permissible. *Kiyoji Murai, ante*, p. 45; *Yasuhei Nagashima, supra*.

In addition to his personal effects, included in the items for which claim is made by Honda were 6 men's shirts, 5 silk neckties, 12 linen handkerchiefs, 1 gold watch, 1 gold ring, and 2 loose diamonds, which items had formerly belonged to his father. However, on his father's death, title to such articles, as community property, by operation of law (*Probate Code of California*, §§ 201, 202) may have passed to Honda's mother, the other claimant herein. Claimant Honda stated that he included these items in his claim under the impression that he, and not his mother, became the owner thereof after the death of his father, an impression which he concluded may have been erroneous. However, since it is clear that one of the two parties claimant obtained the legal ownership of these articles prior to their loss, we think it unnecessary to decide between them. These claims were obviously prepared together, presumably by one of the claimants acting for the other; were

mailed to the Attorney General in the same envelope; and made cross-reference each to the other. Indeed, the claim of the mother would be incomplete but for the fact that it incorporates by reference the explanation set forth in the claim of the son. Cf. *Fumiyo Kojima, ante*, p. 209. Accordingly, to the extent that such doubts exist, the claim may be treated as a joint demand. Consent of claimant Honda to payment of the entire award to his mother having been given, payment thereof in satisfaction of both claims will be made to claimant Kusunoki. This method of payment is effected since some doubt exists as to who is the legal owner of certain of the items and there is further ambiguity as to the portions of the amount on deposit with the Treasury which would be deductible from their respective claims. Payment of the award herein to the one claimant will thus permit both claimants to determine as between themselves the respective shares thereof to which each of them is entitled.