

## CLAIM OF HARUKO ITOW

[No. 146-35-2136. Decided October 3, 1950]

## FINDINGS OF FACT

This claim, in the amount of \$4,800, was received by the Attorney General on April 1, 1949, and relates to loss sustained on the sale of a one-story, seven-room frame dwelling located at 3737 Dalton Avenue, Los Angeles, California. Claimant was born in California on May 6, 1918, of Japanese parents. 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 3737 Dalton Avenue, Los Angeles, California, and was evacuated from this address on April 30, 1942, under military orders, pursuant to Executive Order No. 9066, dated February 19, 1942, to the Santa Anita Assembly Center, Arcadia, California, and thence to the Granada Relocation Center at Amache, Colorado. Claimant was married when evacuated but the realty involved, acquired by her husband prior to their marriage and conveyed by him to her as a gift subsequent thereto, was her separate property. Prior to her evacuation, claimant inquired at the Civil Control Station in her area as to the disposition to be made of her property and was advised that the best thing to do was to sell the house since there would be no one to care for it while she was away, and the Government could not reimburse her for any damage it might sustain during her absence. In reliance upon this advice, claimant advertised her house for sale and sold the property for \$2,777, the highest and best price that she was offered and could obtain. At the time of the sale, and as a necessary incident thereof, claimant expended the sum of \$50 as an

“escrow” or title search fee. Claimant would not have disposed of her property nor have incurred the \$50 escrow cost but for her evacuation. Because of conditions prevailing at the time of the sale, no free market was available to the claimant for disposing of her property at its fair value. Claimant acted reasonably, therefore, in the circumstances. The property was purchased by claimant’s husband in December 1937 for \$3,800, but its fair and reasonable value at the time of sale was \$4,100. Claimant’s loss has not been compensated for by insurance or otherwise.

#### REASONS FOR DECISION

Apart from the usual matters of evidential evaluation and credibility the instant case poses two questions: first, the measure of damages applicable under the Act, a matter now definitively determined by the adjudication in *George M. Kawaguchi, ante*, p. 14, and therefore offering no new problem, and second, the allowability of claimant’s \$50 expenditure for the “escrow” cost. In her formal statement of claim, claimant represents that the subject property was originally purchased for \$3,800 and sold “for \$2,700” with accompanying expenditure of \$50 for escrow cost, and states that upon her return from the relocation center she had no place to go and therefore purchased another and much smaller home for \$7,500, again incurring a \$50 escrow fee. She then adds: “Time is different at the time of sale and purchase and I am unable to determine how much to claim as loss. I would appreciate whatever you think fair for the difference of two homes.” As is apparent from the foregoing, claimant conceives the measure of damages to be the replacement value of her property. As pointed out in the *Kawaguchi* adjudication, *supra*, however, this standard is not applicable under the Act and awards thereunder must be restricted to computation of damage on the basis of fair market value at the time of loss. It accordingly follows that claimant cannot be allowed the cost of replacing the property at the time

of her return from the relocation center, but may receive only the amount of loss sustained at the time of sale.

While claimant's theory as to the measure of damages is untenable, the claim for the \$50 expended at the time of the sale for the title search or "escrow" fee is of different character. That this outlay constituted a necessary and integral part of the transaction involved and, therefore, of the loss sustained on the sale is evident from the fact that the direct result of claimant's unavoidable expenditure in this regard was to diminish the amount actually realized by her from the sale and to make the net proceeds thereof not \$2,777 but, in fact, \$2,727. Plainly, therefore, to deny claimant this amount as an element of loss would be unrealistic and would represent denial to her of the full equivalent of the value of her property at the time of loss. Since such a result would palpably contravene the purposes and intent of the Statute, it is clear that claimant's \$50 escrow cost expenditure is, on the facts found, allowable.

The evidence of claimant's loss consists of her sworn statements, which have been corroborated by investigation. The statement that she sold the property pursuant to the advice given her at the Control Station stands uncontradicted in the record and is in any event clearly credible in light of the facts disclosed by relevant public documents. See, e. g., *WRA—A Story of Human Conservation*, U. S. Department of the Interior (GPO 1946) pp. 155-162; cf. 80th Cong., 1st sess., House Report No. 732, p. 2. As appears from these latter materials, such advice was customarily given to evacuees at Control Stations during the early part of the evacuation. The valuation of claimant's property as of the time of the loss in the amount of \$4,100 is reasonable. Of this amount claimant received, after the deduction of the \$50 escrow fee payment, the sum of \$2,727 as net proceeds from the sale of the property. Her resultant loss, therefore, was \$1,373. Since claimant had no free market and acted reasonably in selling in the circumstances, the loss

is allowable. *Toshi Shimomaye, ante*, p. 1. Since, under California law, the subject realty was claimant's separate property by virtue of the gift made to her by her husband, *Deering's Civil Code of California* (1949), § 158, 162, it is clear that claimant was the sole owner of the property involved. Cf. *Id.*, § 157. Claimant accordingly is entitled to receive the sum of \$1,373 under the above-mentioned Act as compensation for loss of real property as a reasonable and natural consequence of her evacuation.