

## CLAIM OF ALICE SUYEHIRO

[No. 146-35-923. Decided October 22, 1951]

## FINDING OF FACT

\* \* \* \* \*

In July 1941, the claimant leased for a period of 5 years the premises located at 2420 Fillmore Street, San Francisco, California, wherein she operated a beauty shop. Pursuant to the terms of the lease she was required to pay both the first and last month's rental in advance, the last month's rental to be applied as liquidated damages in the event that the lease was breached prior to the expiration date. The claimant operated the beauty shop until April 7, 1942, for approximately 9 months, when she was excluded from the military area in which her business was located. By reason thereof, she was compelled to surrender her lease resulting, among other losses, in forfeiture of the last month's rental in the sum of \$42.50.

\* \* \*

Prior to commencing business therein, the claimant expended \$265.40 for improvements to the premises consisting of plumbing and electrical work, installation of linoleum flooring, painting, and carpentry for which expenditures she herein makes claim.

\* \* \* \* \*

## REASONS FOR DECISION

\* \* \* The loss sustained by the claimant on account of the forfeited rental is allowable by reason of the fact that a failure of consideration resulted on the payment thereof which failure was a direct result of the claimant's evacuation. *Shuzo Kumano, ante*, p. 148. \* \* \*

The question remains as to whether the alleged losses

sustained by the claimant by reason of expenditures made for the permanent improvements to the leased premises are allowable. By operation of law these improvements, which on installation were an integral part of the premises, became the property of the landlord. *Deering's Civil Code of California* (1949), § 1019. As set forth this portion of the claim would necessarily have to be disallowed since the claimant was not the owner thereof and could therefore not have sustained a loss on account of that which she did not own. *Kumano, supra*. However, inasmuch as it is recognized that the claimant was entitled to the use of these improvements, at least for the stipulated term of the lease, and by the addition thereof it may be assumed that the value of the leasehold was considerably enhanced, this claim will be regarded as a request for reimbursement on that basis. For the purpose of providing a yardstick which would enable the damages herein described to be measured, a parallel might well be drawn between instances such as herein set forth and cases wherein the owner of a leasehold interest for a term of years is ousted prior to the expiration of the lease by reason of condemnation proceeding. In general where a leasehold estate is taken for a public use, the measure of compensation for the leasehold interest taken has been held to be the difference between the fair rental value of the leased premises for the unexpired term of the lease and the rent stipulated in such lease. *United States v. Petty Motor Co.*, 327 U. S. 372 (1945); *Pasadena v. Porter*, 201 Cal. 381; 18 Amer. Jur. 936. Applying this method of computation to the instant case, the loss resulting to the claimant would be the difference between the fair market value of the leasehold interest for the balance of the term including the additional improvements, which it is assumed enhanced the value thereof, and the stipulated rental of \$42.50 per month.<sup>1</sup> The claimant has offered

<sup>1</sup> It has previously been established that losses incurred as the result of improvements made by a month-to-month tenant are not compensable. *Shuzo Kumano, supra*.

no evidence as to the extent to which these improvements actually enhanced the value of the aforementioned leasehold interest and it is therefore not possible accurately to compute the alleged damages. However, in the absence of such facts it will be assumed, for the purpose of this adjudication, that such enhancement amounted to at least the cost of the improvements made, or \$265.40. However, in order not to foreclose the claimant from an opportunity to offer further proof that the premises may have been enhanced to a greater degree than has herein been allowed, this adjudication shall not become final until 30 days from the date of receipt of this adjudication by the claimant within which time she may offer further evidence on this score, if she so desires. On receipt of additional facts, if any, in relation thereto, this adjudication shall be reconsidered as to the fair market value of the improved leasehold interest.