

Memorandum.

Re: Claim of Shigeru Nakata

1. Above claim is No. 4700; it was dated 28 Dec. 1945, and was received and recorded in the office of ~~alien~~ ^{alien} property on January 30, 1946.

2. Nakata therein listed his residence as 2550 South Beretania Street, Honolulu. He indicated that he is a citizen of Japan who continuously resided in the United States since April 8, 1940.

3. His claim relates to "24 shares of \$100 par value capital stock of J. S. Niwa & Company, Ltd., registered in the name of Shigeru Nakata (described in supplemental vesting order Number 5183, sub-paragraph 2 thereof)" which he claims was in his own possession immediately before vesting.

4. He alleges that this property was vested in the

Alien property Custodian by "Supplemental Order No. 5183, dated August 1, 1945, and the nature and basis for his claim he set forth in "Exhibit A", the complete text of which is attached hereto.

Certificate No. 16 for 33 shares was issued to me on No. 21, 1941 and was registered in my name at the time Supplemental Vesting Order No. 5138 was served on me. The Corporation, J. S. Niwa & Co., Ltd., received full consideration for the issuance of these 33 shares, namely the sum of \$ 3,300.00 ~~was paid~~ the full par value of the shares. Only \$ 3.75 out of the total sum of \$ 3,300.00 was paid by Seigo Niwa (J. S. Niwa).

The balance of \$ 3,296.25 was paid by me by the cancellation of credit due me in the same amount upon the books of the corporation. Although it is true that originally money belonging to Seigo Niwa was advanced to the corporation and credit given to me, this credit balance of \$ 3,296.25 was due me from the corporation at the time of the issuance of Certificate No. 16 for 33 shares. On these transactions I became a debtor of Seigo Niwa; however, it is not true that by the issuance of Certificate No. 16 I became trustee of these 33 shares for the benefit of Seigo Niwa. I claim that if Seigo Niwa ever was a beneficiary or the beneficial owner of a portion of the credit balance on the books of the corporation standing in my name,

them upon the cancellation of this credit balance and the issuance of the certificate of stock in question, the equity of Seigo Miwa was wiped out. Seigo Miwa permitted and allowed the stock to be issued in my name and there was no declaration of trust by me that I was holding the stock for Seigo Miwa or for his benefit. If I owed him money upon a full accounting, I was his debtor. By his conduct and his own admission Seigo Miwa relinquished all interest, if any he had at any time, in these 24 shares of stock.

I claim that Seigo Miwa could not have successfully maintained an equity suit against me for the recovery of the 24 shares (out of 33 shares represented by Certificate No. 16) or to impress 24 shares with a trust

in his favor in any proceeding. Whether or not he might have succeeded in an action of law for the recovery of the sum of \$ 2,411.45 against me is open to question. I believe that Seigo Miwa would never have asked me to account for or to return the sum of \$ 2,411.45; I believe that he would never have sued me to recover this money or attempt to impress a trust upon my shares of stock represented by Certificate No. 16 for 33 shares issued to me.

Moreover, I had and still have a claim against Seigo Miwa for an undetermined sum in connection with J. S. Miwa Shohai of San Francisco. This was a firm which acted as buying agent for J. S. Miwa & Co., Ltd. Ostensibly it was a branch of the

corporation or an enterprise owned individually by Seigo Miwa. In fact it was a firm or partnership consisting of Seigo Miwa and the San Francisco manager of the establishment as silent partner. I was the manager of said J. S. Miwa of San Francisco from 1932 to January of 1941. And during that period I was responsible for making substantial profits for this firm. Upon a full accounting of the affairs of this firm I am entitled to my share of the profits, which I believe would amount to a few thousand dollars. Seigo Miwa has not made an accounting to me and therefore I do not know the exact amount due me from him in connection with the operations of the J. S. Miwa Shopai during the period in question. I believe that my share of

the profits in this connection exceeds \$2,411.45 or any amount which may be found to be due and owing by me to Seigo Niwa. Upon a full and complete accounting of all transactions had between Seigo Niwa and me. It is my honest and sincere belief that Seigo Niwa would be my debtor.

I don't believe that there was or is any legal or equitable basis upon which Seigo Niwa might have or could have claimed 24 shares out of the 33 shares of stock of J. S. Niwa & Co. Ltd., on August 21, 1945, or at any time on and after November 21, 1941 (the date of the issuance of said Certificate No. 16). Therefore, I do not believe that the Alien Property Custodian had or has the right to vest 24 shares of stock of J. S. Niwa

& Co., Ltd.; which was legally issued to me and which stood in my name at the time of the issuance of Supplemental Vesting Order No. 5183. I dispute the finding that "24 shares registered in the name of Shigoru Nakata are beneficially owned by J.S. Niwa" as set forth in paragraph No. 2 of said Supplemental Vesting Order No. 5183.

I file this claim as a permanent resident of the Territory of Hawaii, even though I am a subject of Japan; and I file this claim as a generally licensed national by virtue of General License No. H-20, issued under authority of the Governor of Hawaii under Executive Order No. 8389, as amended.

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