

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

ERIC HOOGENDOORN AND	:	IN THE SUPERIOR COURT OF
LISA HOOGENDOORN	:	PENNSYLVANIA
	:	
v.	:	
	:	
LOUISE I. CRAIG, 3110 TOWNSHIP	:	
LINE ROAD INC., CRAIG’S TAVERN,	:	
LOUISE I. CRAIG, D/B/A AND	:	
LOUISE I. CRAIG TRUST AND	:	
RAYMOND SHANNON	:	
	:	
APPEAL OF: ERIC HOOGENDOORN,	:	No. 957 EDA 2012
	:	
Appellant	:	

Appeal from the Order Entered March 2, 2012,
in the Court of Common Pleas of Delaware County
Civil Division at No. 09-368

BEFORE: FORD ELLIOTT, P.J.E., WECHT AND MUSMANNO, JJ.

CONCURRING STATEMENT BY WECHT, J.: **FILED JULY 01, 2014**

I join in full the learned Majority’s memorandum. I write separately only to express my concern regarding the *ex parte* communication between counsel for Craig’s Tavern and the arbitrator.

In ***Gov’t Employees Ins. Co. v. Lane***, 401 A.2d 765, 769 (Pa. Super. 1979), we vacated an arbitration award solely because an attorney for one party contacted one of the arbitrators *ex parte* to clarify whether the amount awarded was awarded to each plaintiff or to be shared between the plaintiffs.. We did so because the *ex parte* communication violated the American Arbitration Association rules that the parties in that case agreed to

utilize in resolving their dispute. On the other hand, we will not vacate an award for reasons of *ex parte* communication when the arbitration rules agreed to by the parties do not prohibit such contact. **See *Stack v. Karavan Trailers, Inc.***, 864 A.2d 551, 559 (Pa. Super. 2004).

Here, the parties' arbitration agreement does not address *ex parte* communication or post-award procedures. Therefore, *vacatur* is not warranted upon that basis. However, parties and arbitrators should be careful to refrain from *ex parte* communication that may give rise to an appearance of impropriety and that may provide a basis for the type of challenge made by Hoogendoorn.¹

¹ The Code of Ethics for Arbitrators in Commercial Disputes developed by the American Arbitration Association and the International Centre for Dispute Resolution provides that, with a few exceptions, "[a]n arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party." Code of Ethics for Arbitrators in Commercial Disputes (2011), at www.adr.org/aaa/faces/arbitratorsmediators/aboutarbitratorsmediators/codeofethics (last visited June 17, 2014). While the parties did not agree to be bound by these rules and, in general, parties to arbitration may agree to other rules, the Code of Ethics is still informative with regard to the type of behavior expected from arbitrators.