



BOXALL BATTLES

PHASE 1 – INTERVIEW

Confidential Information for Keith Nelson

Background

You are the President and CEO of BoxAll, Inc., a company your father, Fred Nelson, founded more than fifty years ago and still owned by your family – your 88-year-old mother and your sister, Dianne Nelson. BoxAll manufactures boxes, packaging, sealing, and wrapping materials. Though most of your father’s working life, BoxAll was a relatively small but profitable business. It enabled the family to live very well, with more than sufficient income for a terrific home, private school and college tuitions, and frequent vacation travel. The profits your father earned from BoxAll also enabled him to make significant commercial real estate and side-business investments and generous annual charitable contributions over his lifetime.

You were appointed President and CEO upon your father’s retirement 20 years ago. He passed away five years ago. It’s undeniable that BoxAll’s revenues and profits have increased dramatically under your leadership, particularly in the last few years. As detailed further below, under specific formula terms and ownership shares set by your father’s will, 60% of BoxAll’s annual profits are allocated among your mother, your sister, and you every year. You have always honored these terms. Your father also created The Nelson Family trust for his substantial commercial real estate holdings, with your mother as primary beneficiary. These this will pass to you and Dianne upon your mother’s death.

The immediate reason you decided to consult an attorney is the threatening email received from your sister Dianne a few days ago, saying:

Listen, big brother, don’t think you can get away with trying to cheat me out my rights in BoxAll. I’m sure you’ve been hiding profits and double dealing to drive our profit shares down, and I’m going to get to the bottom of it. Now that dad’s gone, you aren’t going to get away with pulling the wool over little sister’s eyes any longer. You’d be wise to see a lawyer and get ready for battle.

You think Dianne has a triple martini habit and might have been drunk when she wrote the email, but she no doubt means what it says. Frankly, ever since her divorce she’s become resentful and suspicious, even more so since your dad’s death. Lately, she and your mother seem intent on bringing you down.

You initially called BoxAll’s corporate counsel, but he explained that he couldn’t represent you personally in any dispute involving BoxAll or your family members. He referred you to a law school classmate who was recently named a partner at a downtown law firm. You checked the law firm’s website and confirmed that this lawyer’s practice area seemed to line up. You called the lawyer’s office and made an appointment to meet and consult.

Your history with BoxAll

Since you were a kid, your father made it known that he would be proud if you would someday assume the helm at BoxAll. You began working at BoxAll in the summers throughout high school and college. With your father's approval and encouragement, you completed an undergraduate degree in civil engineering at the local university and an M.B.A. at Cornell. Even then, your father would regularly discuss business decisions with you, and often seek your input and advice. Upon your joining BoxAll, he immediately named you a Vice President. He also made sure your responsibilities rotated to facilitate your learning all aspects of the business. You took great joy from your close relationship with your father at BoxAll. Upon his retirement, you became BoxAll's President and CEO.

Ever since you remember, BoxAll provided annual profit share distributions to you, your mother, and your sister Dianne. That was true when your father ran BoxAll and continued when you took over. Your father made clear his intent that BoxAll and his other investments should continue to support the family after his death. You have fully honored that intent.

It's fair to say that these profit shares have mostly grown over the years. They became significantly larger about four years ago, as BoxAll's revenues and profits also greatly increased. BoxAll had a rough patch in the year or so before and after your father's death, but you turned it around. Distributions have been well into seven figures annually for each of you over the past few years.

Your father also invested in commercial and residential real estate, including two highly successful car washes, two substantial strip malls, and three small apartment buildings (all operated by various management companies). He initially held and managed these properties as well as the BoxAll shares through the Nelson Family Trust, with your mother as the primary beneficiary.

When your father passed away five years ago, under the Trust terms, 48% of BoxAll passed immediately to each of you and Dianne. The Trust included a proviso for annual deduction off the top of your profit shares for your mother of at least \$500,000 in annual living support plus the cost of any necessary care or special requests for the rest of her life. The remaining 4% of the BoxAll shares, your father's miscellaneous cash and stock accounts, and all the real estate remain in the Nelson Family Trust and thus belong to your mother.

Your father named you Executor of his estate and Successor Trustee of the Nelson Family Trust upon his death. The trust instrument provides that after your mother passes, the properties are to be appraised and you and Dianne are each to own a 50% interest in each piece of real estate and split the remaining 4% of BoxAll shares.

Unfortunately, your relationship with Dianne has deteriorated since your father's death, as has your relationship with your mother.

On the financial side

The real estate holdings: At the time your father passed away, his commercial real estate property held more readily quantifiable value than BoxAll. He owned two highly successful car washes, two substantial strip malls, and three small apartment buildings. Competent management companies have been operating and overseeing these properties. You haven't seen any recent valuations, but you have to believe these were worth at least \$32 million at the time of your father's death. You don't know what they are worth at this moment, but surely not less than that.

About BoxAll: Over the years you and your father ran BoxAll together, you both drew annual salaries of about \$500,000, with sizeable bonuses in years the business did well. In some years, the bonuses were as high as your salaries, in other years you drew no bonuses. No one ever questioned or quibbled about these salary or bonus amounts or BoxAll strategic business or investment decisions. Everyone understood that BoxAll was to support your mother if he predeceased her, and eventually to go you and your sister. Corporate practice (set by your father) has long been to distribute a minimum of 60% of net profits to then current and beneficial shareholders (your parents, you, and Dianne), with the balance going to employee bonuses and reinvestment in operations or new product development.

The BoxAll operating agreement provides for annual shareholders' meetings to review the year-end financials. (You had never refused your sister or your mother access to financial reports or back up data outside of the meetings; they had never asked.) When the family was getting along tolerably well, the shareholders' meeting would take place at dinner in a private room at a posh restaurant. Your mom and your sister would each be given their hefty BoxAll profit share check and a one-page BoxAll financial statement summary. Everyone would raise a glass to BoxAll and enjoy a great meal.

Last time, Dianne seemed relieved when you suggested, "let's skip the annual formalities" and vote via email that the shareholders' meeting be deemed to have occurred based on a distributed financial summary showing record breaking profits and the calculated shareholder distribution. No doubt, everyone was happy not to endure an uncomfortable evening together.

The numbers in the email you sent made it clear that BoxAll revenues and profits have grown at least 200% over the past two years. The most recent net profits were \$10 million, leaving \$6 million to distribute: \$500,000 off the top to your mother, and then \$5,500,000 more to allocate to her, Diane, and you.

At some level, you're not sure what's eating your sister and why she can't just be gracious and grateful for BoxAll's business success. She may not have been fully aware, but shortly after you took over the helm, the business was "on the brink" more than a few times. Now it's phenomenally profitable. Part of the reason was your decision to hire an experienced and top-notch Sales VP. You encouraged him to develop and invest in ideas for new

patents and eventually brought in the large volume contracts. Initially, you had to buck BoxAll's CFO (who happens to be your sister's neighbor) to pay the new Sales VP at a much higher level than budgeted and then invest in new product and patent development. A few years ago, to obtain necessary financing for BoxAll's investments, you extended a loan to BoxAll from your personal bank account. The available bank financing would have been at a higher rate and would have required a security interest in the shareholders' personal residences. You weren't willing to go there, and you knew your sister wouldn't either.

That same CFO has been doing cartwheels since the Sales VP closed on a lucrative contract to supply new bio-degradable packaging materials to a large swath of Amazon warehouses, as well as some national moving companies. Shortly after that, when you mentioned to Dianne that BoxAll had patented a new environmentally friendly package reinforcement, shock absorption, and closing system, she more or less rolled her eyes. She has never expressed any interest in the business; all she cares about are the annual checks.

The future of BoxAll – conflict and control

Your mother is now 88, and in an assisted living apartment. She still seems more or less “with it” most of the time. It's true that she often forgets details of events in recent years and may mix up exactly what happened or when. However, she is well aware of who the family members are. She knows that the family owns BoxAll, a company founded by her late husband, and that you now run the company. She also knows her income is provided through BoxAll distributions and income from the commercial real estate holdings.

No question, your relationship with your mother is a difficult one. On the one hand, whenever you visit her, she says: “My son, Mr. BoxAll Chief, following your father's footsteps.” She reminds you that you are obligated to make sure she is taken care of. However, being connected to your father in her mind is not always positive. She makes comments such as: “Your father was a provider all right, but he was a controlling S.O.B. He was supposed to treat me like a princess, but he treated me like his servant instead. And nothing I ever did was good enough for him.” If your sister is there, she chimes right in, accusing your father of being a sexist and misogynist. They seem to take pleasure in insulting you with jabs like: “Big britches CEO Keith, really just daddy's puppet and pet.” Every so often you call them on the insults: “Is that really necessary? I do go to the office every day and make money for you two, just like Dad did. I don't mind really, but could you cut out the insults.” Mostly, you try not to respond, just let it roll off your back.

Thus, it was with some trepidation that you decided to raise with your mother the issue of her BoxAll shares and what should happen to them after her passing. During a recent visit at the assisted living facility, you re-explained she is now the owner of 4% of BoxAll as well as real estate in the Nelson Family Trust. While she didn't remember the exact %, she said she said that she was aware that she had inherited a small share in BoxAll. She also agreed that your father had insisted her will provide for it to be split between you and Dianne after her passing. (They both had their wills drawn up by the same lawyer, many years before his death.)

You then acknowledged that, sadly, you and Dianne have not had a good relationship over the past several years. You told her that if her 4% were equally divided, and you each then had 50% shares in BoxAll, there would be continual conflict between you. That conflict would tear the family apart forever. And, if it made sense to sell BoxAll someday, that conflict would drive down BoxAll's value for potential buyers. Of course, that would hurt both you and Dianne, and eventually the value of her grandchildren's interests.

With that as prologue, you asked your mother if she would consider changing her will to divide her BoxAll ownership share 1% to Dianne and 3% to you. You were careful to emphasize that your goal was NOT to cheat Dianne out of any money. You would insist that the equivalent value of the extra 1% - whatever it would be - should be given to Dianne by increasing her share of the real estate or cash reserves in the Nelson Family Trust. Your ONLY goal was to avoid future conflicts between you and Dianne regarding BoxAll. Your mom said she understood completely and would think about it. You said if she decided it was a good idea, you would take her to meet with her lawyer.

You aren't sure what your mother told Dianne about this conversation, but you suspect that's what may have prompted Dianne to contact a lawyer and make those shrill email accusations against you.

Focus on personal perspective

It rankles you that your sister and your mother don't appreciate your obvious success at growing BoxAll and its profits. They don't know or don't care that the business was "on the brink" for a while and your vision is what turned it around. Instead of thanking you for larger and larger annual distribution checks, they seem to resent your relationship with your father and his having turned BoxAll over to you. Maybe now it bothers Dianne that she never did anything at BoxAll. As far as you know, she never asked. Even though she did some graphic design work right at a local company out of college, she then married a doctor and raised her kids. Though now divorced, you know the divorce settlement was a generous one. She hasn't attempted design work or any other paid work since then, preferring to garden and volunteer at a community arts center. That's her choice: she has never wanted for money thanks to your dad, her husband, and now you. By any financial measure at least, she is a wealthy woman.

On your own personal front, you were relieved to be divorced ten years ago, after a 25-year marriage. It was time. You have an amicable if distant relationship with your ex-wife, and good solid relationship with your now-adult twin sons. Neither of your sons wants anything to do with BoxAll. One is a political journalist and the other a college math professor. In the old days, they had good relationships with Dianne's kids - their first cousins. You honestly don't know if that generation is in touch much at this point.

Bottom line: you are at peace with your life. You enjoy your work and your colleagues at BoxAll. You enjoy being on the board of various local charities. When a charity

occasionally names you an “honoree” for its annual dinner, you know it’s all about donations and fundraising. Still all the fuss is fun and it’s good when you and BoxAll can help a good cause.

While you have dated from time to time, you have no pressing need or current plans to marry again. You have a great circle of friends for dinners out, seeing a show or concert, and occasion travel. Whatever Dianne’s and your mother’s “issues” with your father, whatever old resentments, you wish they would stop throwing barbs at you. It’s time to let it all go.

Your future interests and concerns

On the financial front: simply put, you are a wealthy man. Your BoxAll salary and bonuses have been considerable over the years. The annual BoxAll shareholders’ distribution checks have been even higher, thanks to your hard work and management success. It would make no sense for Dianne to end up with more BoxAll gains than you. You are both equal heirs to BoxAll and, eventually, to your father’s real estate holdings through the Nelson Family Trust. The only reason you thought to suggest your mother allocate her 4% unevenly (3% to you and 1% to Dianne) was to avoid future conflict with Dianne over BoxAll decisions – current management control and potential sale of the company. It was never about the extra 1% of value – she can have that. At this point, you have no strong attachment to any individual particular of commercial property in the Nelson Family Trust. You would think more carefully about that when you and Dianne inherit these through the trust. Maybe you would prefer one property vs. another, for your sons’ sake. Even if that were true, you can’t see putting up a fight about any of them. Life is just too short for fighting. You’ll gladly pay to prevent that.

Upcoming meeting with a lawyer

Even though the lawyer comes highly recommended by BoxAll’s counsel, you still must decide whether you will work well together. Your sister and your mother can be tough once they get an idea in their heads. You want to feel confident that this lawyer would strongly represent your interests in BoxAll and the real estate and take whatever formal legal actions become necessary. If you come to feel that the lawyer seems uninterested, unmoved, or less than competent – you can always find another. It’s important that your lawyer communicate well, show you respect, and take this matter seriously. On the other hand, if you would feel good about this lawyer representing you, then do feel free to provide whatever information or perspective makes sense.