



BOXALL BATTLES

PHASE 1 - INITIAL INTERVIEW

Confidential Information for Dianne Nelson

Background

Your family has long owned BoxAll, Inc., a company that manufactures boxes, packaging, sealing, and wrapping materials. Your father, Fred Nelson, founded BoxAll more than fifty years ago. Through 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.

From your earliest days, your father was obviously grooming your brother, Keith, for BoxAll. Keith never expressed any other ambition. Your father made no secret of his pride and happiness that Keith would one day run the business. His clear intent was that BoxAll and his other investments support the family long after his death. Keith worked at BoxAll every summer through high school and college. He did an undergraduate degree in civil engineering at the local university and then an MBA at Cornell. While Keith was in college and business school, your father often discussed business decisions with him. At first, it seemed that he was educating Keith about BoxAll. Eventually, your father seemed to be asking for Keith's advice. Keith and your father's relationship became increasingly close, even more so when Keith joined the BoxAll. He was immediately named a "Vice President." Your father made sure Keith's responsibilities rotated within BoxAll, so he would learn all aspects of the business. When your father retired at least 20 years ago, Keith became BoxAll's President and CEO.

Ever since you can remember, BoxAll has provided annual profit share distributions to you, your mother, and Keith. That was true when your father ran BoxAll, and it continued when Keith took over. You'll be happy to share the precise numbers if your lawyer asks, but it's fair to say that these profit shares increased not long before your father retired. They grew significantly larger starting five or six years ago – well into seven figures - as BoxAll's profits also grew. For last two or three years, each check has been higher than the last.

Your father also regularly invested in real estate, including two highly successful car washes, two substantial strip malls, and three small apartment buildings (all operated by various management companies). These properties were held in the Nelson Family trust, initially managed by your father, with your mother as the first level beneficiary. Sadly, your father passed away five years ago. Upon his death, 48% of BoxAll shares passed immediately to each of you and Keith, with a proviso for annual deduction from your profit share of at least \$500,000 for you mother as her annual living support. The trust was also to cover costs of all 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 real estate holdings went into the Nelson Family Trust and thus belong to your mother.

Your father named Keith as 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 Keith 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 Keith has deteriorated ever since your father's death, as has Keith's relationship with your mother.

You are consulting an attorney now because you have reason to believe that Keith is cheating you and your mother out of your fair share of BoxAll profits by exploiting his BoxAll position to generate payments for his sole benefit. Most shocking, you recently learned that Keith tried to manipulate your mother into signing over three of her four BoxAll shares in her will, giving him 51% of BoxAll.

That's outrageous and sad, and you're sure it's illegal. That most recent episode further convinces you that Keith has been getting away with illegal financial dealings to benefit himself at the expense of you and your mother.

What you know now on financial side

The real estate holdings: As stated above, your father owned two highly successful car washes, two substantial strip malls, and three small apartment buildings (all operated by various management companies). You haven't seen any recent valuations, but you believe these were worth at least \$32 million at the time of his death. You don't know what they are worth now, but it is not less than that.

About BoxAll: Over the years that Keith and your father ran the business together, they both drew salaries in the range of \$500,000 annually and often took bonuses on top. In some years, the bonuses were as high as their salaries; in other years they drew no bonuses. No one ever questioned or quibbled about their salary or bonus amounts or about their strategic business or investment decisions. Even though, technically, your father was 100% owner of the stock, everyone understood that BoxAll was to support your mother if he predeceased her, and eventually go you and your brother. Corporate practice (set by your father) has long been to distribute a minimum of 60% of net profits to the shareholders, with the balance going to employee bonuses and reinvestment in operations or product development.

You know the BoxAll operating agreement provides for annual meeting of shareholders to review of the year-end financials (and access to all financial reports on an on-going basis). When the family was getting along tolerably well, the "meeting" took place at an upscale dinner place. Keith would hand out hefty BoxAll profit share checks and one-page BoxAll financial statement summaries. All would raise a glass to BoxAll and enjoy a great meal.

You were frankly relieved last time when Keith suggested skipping the annual formalities and voting via email that the shareholder's meeting be "deemed" to have occurred based on his attached financial summary showing profits and calculated shareholder distribution. You and your mother were happy not to have sit at table and hear Keith brag about BoxAll.

The numbers in Keith's email showed that BoxAll revenues and profits have grown at least 200% over the past two or three 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 Keith, you, and her according to your % shares.

Even though this is good, it irks you that Keith claims all credit for "business brilliance" for taking BoxAll from the brink to phenomenal profitability. In your mind, Keith's smart move was hiring BoxAll's sales VP, who had the idea for new patents and brought in large volume contracts. You understand from the BoxAll CFO (who is also your neighbor) that BoxAll landed a lucrative contract to supply bio-degradable packaging materials to a swath of Amazon warehouses, as well as some national moving companies. You remember Keith's announcement a few years ago that BoxAll had secured patents for an environmentally friendly package reinforcement, shock absorption, and closing system. "All that money I invested in R&D and lawyers paid off, and now we're gearing up with production equipment." Perhaps that was responsible for the increased profits? You're not sure.

Your personal accountant said he wouldn't be surprised if Keith were aiming to sell BoxAll to a larger company, at a very high price, sometime within the next five or so years. Keith is now 55 and not getting any younger. You don't want to be cheated now or in a future sale.

Outrageous move to seize controlling shares

Your mother is 88, and in an assisted living apartment. While she is "with it" much of the time, she does forget things and seems easily suggestible. Perhaps to cover for memory loss, you can ask her "don't you remember?" about some event, and she'll say she does, whether or not it's true. Once or twice, you've asked her about a family celebration, she's agreed with your description, and you later learned that she was not there.

Until now, your mother's will has provided for equal division of her 4% of BoxAll between you and Keith, so that you would each end up with 50%. While you relish the idea of having equal control over BoxAll, you also see the likelihood of big and possibly unresolvable conflict between you and Keith.

A few days ago, you took your mother out for lunch and she mentioned that Keith had visited, talked about her 4% shares, asked if she would leave 3% to him and 1% to you to avoid future conflicts. She said she agreed to do it because that is what your father would have wanted. And she said that Keith was going to go with her to meet with her lawyer sometime soon.

You are incensed! Keith is scheming for complete BoxAll control.

You decided that if Keith tried to pull this move, there's no telling what else he has been up to with BoxAll. You never spent any time looking at the details of the annual financial summaries. You have just checked to see your check matched what was due under the formula. You never bothered to save the financial statements.

At this point, after that troubling conversation with your mother, you'd sure like to look back at all of the BoxAll books. You wouldn't be at all surprised if brother has been cheating both of you all these years.

You sent Keith the following email:

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.

As stated, your goal was to prompt him to get a lawyer, beyond BoxAll's corporate lawyer. You would much rather have this fight through lawyers and avoid dealing with Keith directly. Plus, a lawyer might talk some sense into Keith and let him know that he can't get away with cheating you and your mother.

Focus on personal perspective

It still rankles you that your father never asked you to play a role in BoxAll. He didn't show much interest in your capabilities as a kid. You were a disciplined student who earned good grades, with obvious talent in art. Clearly though, your father was always much more interested working with Keith on science projects, quizzing him for math team tryouts, and reading his college and business school papers. In those days, you chalked it up to the observable truth that only men ran businesses. This was already starting to change in the outside world when you were in high school and college, but not in your father's world.

After earning a college degree in graphic design, you worked in the graphic design department of a large local company for several years. You then married a doctor and decided to focus on raising your children. With your husband's salary and distributions from BoxAll, you did not need additional income to support a nice lifestyle. Now that the kids are grown, you have time on your hands and a desire to be productive outside of the home. You were divorced some time ago, with a generous financial settlement. At this point, you don't know who would hire a woman in her early 50s to do much of anything. Though BoxAll sure could use some graphic design work, you have not picked up the current electronic/software aspect of graphic design. Just as BoxAll has given Keith a place use his intellect and his skills, you wish you had that option now. If your father were still

alive, you bet he would have made a place for you at BoxAll. Truth be told, at this point, you can't imagine working directly with Keith.

Your interests and concerns

Fundamentally, you do not want your brother to get away with cheating you and your mother, and you want recognition as an equal member of the Nelson family. Keith wasn't born smarter or more talented; he was just born male. Because of that, he was groomed to run the family business and now enjoys the prestige and respect accorded to a successful corporate President and CEO. Charities ask him to join their boards; fundraisers make him the dinner honoree; people at BoxAll practically bow to him in the corporate hallways. At some local events, you've sometimes been introduced as the sister of Keith Nelson, President of BoxAll. While you've not lacked for money over the years, you've never had great recognition or respect in the larger community. You married a doctor, raised your children, and were divorced. Now what?

In fact, you have an interest in greater connection to the family business, using your own graphic design talents. In the "olden days" when you were a teenager and Keith had just started at BoxAll, your dad told you his rule was than any Nelson could have a job at BoxAll, if they wanted it. You never asked, and neither Keith nor your dad ever asked you. In fairness, you were more comfortable with your art designer friends than in the corporate world. Once married with children, you didn't think about a BoxAll job.

Lately you've been thinking about doing some work with a not-for-profit organization. Perhaps you could help organizations with their logos or promotions, or fundraising events. While you've been on the board of a local community arts center that offers art lessons after school and on the weekends, that has just proven that your design skills are rusty and out of date. Nowadays, they learn to make digital images; painting and drawing on paper are not enough. The best path might be to start working with BoxAll. You don't want a full-time job at this stage, and there's no way you would want to report to Keith. On the other hand, it might be fun if the product and packaging design folks would seek your input, or let you put offer some design suggestions. Even if it wasn't at BoxAll, surely the BoxAll folks could introduce you to people in product design at other companies. It's not about the money. It might be a way to get back into graphic design, and maybe learn something about marketing and promotion.

You are naturally well organized and gregarious, and you've always been good at predicting what packaging will be well received and what products will sell. If you could start at BoxAll or someplace like it, you would get some experience to bring to a not-for-profit. That would give you something to do besides gardening, gossip, and kids' art shows.

On the financial front: while you don't *need* more money, you surely don't want Keith to get more of BoxAll's gains than you. Your dad left you equal shares. You will not agree to any arrangement that would allow Keith to get more. It's important to prevent him from pulling the wool over your eyes or hiding any shady dealings. You demand full

transparency, the right to know BoxAll's revenues and profits, and a say in the future of the business. The same is true for the Nelson Family Trust's real estate holdings. With respect to the real estate, you don't want to have to deal with your brother regarding each property. It would be better to split them up. You would most likely sell the properties that go to you, rather than worry about managing them.

Upcoming meeting with a lawyer

You are about to meet with a lawyer recommended by your accountant. You went to the small firm's website, clicked on the lawyer's name, and completed an on-line form asking the "type of matter." You described it as "family business dispute and unlawful efforts to change an elderly person's will." You also entered your accountant's name as the referral source.

You may decide to retain this lawyer to represent you in protecting your interests in BoxAll and the real estate, and possibly take formal legal action against your brother. If you are not comfortable working with this lawyer – if they seem at all uninterested, unmoved, or less than competent – you won't do so. It's important that your lawyer communicate well, without patronizing you or minimizing the problem. There are plenty of other lawyers out there. On the other hand, if you would feel good about this lawyer representing you, then feel free to provide whatever information you like.