



## **BOXALL BATTLES**

### **PHASE 3 - POST FIRST LAWYER-TO-LAWYER DISCUSSION**

#### **PREPARATION FOR SECOND CLIENT MEETING**

#### **Information for Keith Nelson's Lawyer**

BoxAll's corporate counsel told you to expect to be contacted by the lawyer representing Dianne Nelson, your client's sister. Sure enough, the lawyer sent an email the next day. It explained that your client's mother had obtained separate counsel, but for the time being, is content to be informed of any developments that might impact his client's interests.

In an introductory call with Dianne Nelson's lawyer, you both agreed that it would be good to see if your clients could resolve their disputes amicably, without filing formal legal actions. The lawyer explained that, without seeing any financial documents, Ms. Nelson was angry and concerned when she learned from her mother about Keith's attempt to manipulate her into leaving him  $\frac{3}{4}$  of her 4% of BoxAll – 3% - instead of splitting it equally between them upon her death. According to his client, Keith had to know their mother is 88 and not entirely lucid. While she hasn't been formally diagnosed with Alzheimer's, anyone who spends time with her can tell that she's not really with it. She's pretty good with stories about "the olden days," but can't remember what happened yesterday, let alone a few hours ago. Perhaps to cover her own cognitive decline, she's completely suggestible – happy to agree with what people tell her.

Her lawyer explained that Ms. Nelson was highly suspicious about her brother's financial management practices at BoxAll and wanted to examine *all* the financial books and records. While everyone in the family would qualify as wealthy, she wonders whether her brother hasn't been stocking away more than he was entitled to over the years. Apparently, summary financial statements were handed out at the shareholder's annual dinner meeting, but she never kept them or focused on the details at the time.

Within a week after that conversation with Dianne Nelson's lawyer, you sent him all the BoxAll summary financial statements from the last ten years. These show BoxAll revenues and expenses, including executive salaries and any loans extended to BoxAll, as well as interest paid on loans. Before sending, of course, you reviewed them with BoxAll's CFO.

The only potential issue you found was that Keith had made a \$3 million loan to BoxAll 5 years ago, from his own funds, with interest at 8%. Since then, as reflected in the financials, BoxAll has paid Keith interest and principal of approximately \$300,000 per year. (\$240,000 of this was all interest the first year, and then the company started paying down the principal too.)

Not long after you sent the documents, you weren't surprised to receive an email from Dianne's Nelson's lawyer, asking whether your client had any explanation for the loan's high interest rate, or for his efforts to influence their mother to change her will.

You set up a Zoom call with Keith and asked him about both issues, and what you could communicate to Dianne and her attorney. Regarding the loan, Keith explained that when the loan was made, banks were advertising commercially interest rates were in the 4-5% range. It was a teaser. He's not sure what businesses could actually get a loan at those rates – maybe Procter & Gamble. BoxAll was no P&G. The company's overall financials weren't great at the time; that's why they needed a loan. BoxAll's banker said they wouldn't lend at a lower rate than 10% without



personal guarantees and mortgages on the homes of BoxAll shareholders. Keith believes he explained this at the annual dinner meeting, and none of them (including Keith) were willing to provide personal guarantees or mortgages. So, Keith decided to loan the company from his own money at an interest rate lower than the bank had quoted.

Regarding the 4% BoxAll allocation, Keith wanted you and his sister to know that he wasn't trying to cheat her out of any money by asking their mother to have her will allocate 3% of BoxAll to him and 1% to Dianne. He insists that he explicitly told their mother that any difference in monetary value should be made up with other assets – property or cash reserves. He was worried that a 50/50 split would mean unresolvable future conflict that would diminish BoxAll's value and thus harm both of their financial interests. The mother seemed to understand and agreed that conflict would continue to tear the family apart. Based on what's happening, Keith now assumes that she didn't really understand or, more likely, that she forgot and never conveyed it to Dianne. Keith is fully committed to carrying out their fathers' intent: that both siblings share equally in the financial value of BoxAll and his other holdings.

You communicated all of this to Dianne's lawyer and asked that he explain it to her. You also suggested that, once the information has been conveyed, perhaps it would make sense to try to negotiate a resolution of your clients' dispute.

In the meanwhile, even before you hear back from Dianne's lawyer, it would be wise to check in with your client about his goals and interests in a future negotiation. You can always talk with Keith again, and revisit these after hearing Dianne's and her lawyer's response to the information you conveyed.