BOXALL BATTLES
7 – For Later Meeting & Possible Settlement

Information for Keith Nelson

Despite your and your lawyer's efforts, you were unable to work out a resolution of the many conflicts between you and Diane and your mother.

You weren't surprised to learn from your lawyer that the other side's is now making even more claims against you. Apparently, the lawyer looked at the figures behind "executive compensation" in BoxAll's financials.

As you explained to your lawyer:

> These have never been hidden. No one ever asked to review them. Yes, I had begun to take higher bonuses in the last five years than in the past. My regular salary has been $500,000 for as long as I can remember, as was my father's before he retired. My father's policy was to keep the base salaries constant but to be generous with bonuses, effectively doubling my compensation (and his, before retirement). Even after he retired, as BoxAll's owner, my father reviewed and approved all executive compensation, including bonuses. In one confidential conversation, my father almost apologized for setting it up for Dianne to get equal shares in BoxAll even though I had built BoxAll's value. He affirmed that he approved of my large bonuses as unofficial but entirely fair adjustments to the annual profit share distributions. "Your sister hasn't done a day's work in the last 30 years, and you've been at BoxAll every day. If BoxAll's business ever really takes off, you can triple that bonus. She'll still be rich enough."
>
> During that first year after my father's death, I took a $600,000 bonus. Why that year? One of the top executives had left suddenly early in the year; meaning that I covered both jobs. Though business was shaky that January, by the end of the year, it looked like my savvy investments of the loan proceeds were going to pay off. I earned that bonus, especially since I hadn't had a raise for decades. During the next four years, my bonuses were $600,000, $650,000, $700,000, and $750,000. The other top executives received bonuses in the $50,000 range. By then, the business was going gangbusters. My father would surely have approved.
>
> If anyone had bothered to ask about the bonuses, I would have told them exactly that. Isn't it too late to complain now? My management practices have been transparent and BoxAll books meticulously kept.

Your lawyer recommended an additional attempt at negotiation to resolve current disputes and agree on a path forward to you, Dianne, and your mother. After discussing this with you and with opposing counsel, the lawyer will advise as to whether to go directly to mediation or attempt to negotiate first. The negotiations could be just lawyer-to-lawyer, with client authority, or you, Dianne, and (maybe) your mother could participate. Your lawyer explained that in mediation, a neutral seeks to facilitate agreement. The mediator would likely insist on you and Dianne (and maybe your mother) being there, though you could be in separate caucus rooms all or most of the time.

Your response was: "Whatever works." When asked what you would need to see in a final, settle everything agreement, you asked for time to think about it. And you did just that.

You finally decided that you would want a settlement that takes into account:

1) Your contribution to BoxAll over the past 30 years – really your entire working life.
2) Your half interest in BoxAll (after your mother's passing).
3) Your father's wishes and intent for you, Dianne, and your mother.
4) Your need for some autonomy in making critical business decisions for BoxAll.
5) Your desire to avoid business interruption or devaluation from Dianne's irresponsible actions.
6) The importance of presenting BoxAll well to future purchasers, and the ability to sell BoxAll at a time and on terms that are optimally favorable.
7) Your desire to end up with no less than half the value of the real estate properties. If they will be divided between you and Dianne, you want the division to reflect your own preferences and valuations.
8) Your desire to be DONE with Dianne and your mother and this whole mess.

You don't care whether settlement is reached in negotiation or mediation, as long as it gets done.

Regarding the Property

You know both sides have the document listing the appraisals of the Nelson Family Trust's various real estate holdings just after your father's death (attached). They could all do with a fresh appraisal. Their current dollar values are higher than five years ago, as commercial property values have increased since then. Still, if their relative values are about the same, the earlier appraisals can serve as the basis for negotiation about allocation.

For negotiation purposes, and estimated appraisal values aside, you have interests, intuitions and preferences relating to each of the various properties. In other words, you would "pay" more or less than the stated value – or at least count them as more or less valuable in negotiating about allocation between you and Keith. Underneath each property's appraised value, you have added comments the way *you* subjectively value each property.

1) Compass Road Nelson Car Wash - $3 million (land & equipment with profit multiplier)

   This car wash has high and steady customer volume. It benefits from a location close to local playing fields, a nature center, a church, a gas station, and an ice rink. You suspect the former appraisal of $3 million is still about right.

You have no sentimental attachment to this car wash, and no other reason to give it more value than $3 million in a negotiation with your sister.

2) Dexter Road Nelson Car Wash - $2 million (land & equipment with profit multiplier)

   The Dexter Road car wash is not highly profitable. Its $2 million dollar valuation is due to its location on a large parcel of land, with good highway access. In fact, you value this property at far more than $2 million. You believe it will be worth as much as $5 million because it's quite close to BoxAll and to the airport. If you owned the property, you might develop it as a warehouse or supplementary production facility, and later sell or lease it to a new BoxAll owner or to another business that would value proximity to the airport.

3) Exeter Street Strip Mall - $3 million (land and buildings with profit multiplier)

   While you don't view the earlier appraisal as obviously wrong, you see this property as difficult to value because of its location. It's relatively close to the city center, but no one knows if that area of the city will generate more commercial activity soon. It's hard to say whether the volume of foot traffic or car traffic will go up or down, or whether the city's public transit routes will reach that area. The tenants are all on long term leases, but they are all small businesses, not national chains. So, if their businesses don't remain profitable, they won't be able to pay the rent. Bottom line, $3 million might be right but it's not a firm estimate. It could be worth anywhere from $2-4 million.

4) Fairview Street Strip Mall - $5 million (land and buildings with profit multiplier)

   What was the appraiser was thinking when he put a $5 million dollar price tag on this strip mall? It's not worth nearly that much. Perhaps the high valuation was prompted by its location across the road from a large regional mall/shopping center, and the numerous eateries by the property. Unfortunately, since your father's passing, the larger regional mall has gone into receivership. It is all but shuttered; the anchor stores have closed. On the property's side of the road, the eateries have either closed or converted to drive-throughs.

   The management company has been struggling to collect rents and three of the six business tenants have indicated they don't plan to renew their leases over the next few years. You are quite certain that an updated appraisal (or a conversation with the property management company) would confirm it has probably lost at least half of its value. To reap real profits, you would need a refocused business plan and, no doubt, substantial investment in the property. Frankly, the location is pretty far from where you live. You have no interest in spending time or effort thinking about a new business plan or overseeing a further investment there. <u>Given all this, you value this property at no more than what you guess you could sell it for on today's open market -- $1-2 million.</u>

5) Garnet Apartment Building - $6 million (land and buildings with profit multiplier)

   You think this valuation is about right. While the Garnet is a grand old building, it's not in the new "hotter" areas of town. The Garnet apartments have benefitted from unit-by-unit renovation and cosmetic work over the past ten years. With your approval, the management company oversaw this work between leases, enabling it to command at top dollar rent for the area. The tenant demographics trend toward empty nesters so there's not much turnover.

   You have no attachment to this property. It's not far from your residence, making it easy to stop by to check that common spaces are clean and well maintained. <u>You doubt a new appraisal would be appreciably different from the earlier one – about $6 million.</u>

6) Hoover Apartment Building - $5 million (land and buildings with profit multiplier)

   The Hoover Apartment building has been assessed at lower value because its per unit rental averages are lower. Each unit is reasonably large, but finishings and appliances are low cost and outdated. Many units' layouts are inefficient and awkward. With some renovation and investment, much higher rents could be charged. Or the building could easily be turned into condominiums without bumping into local legal restrictions. <u>For that reason, you would value it at closer to $8 million.</u>

7) Ibid Apartment Building- $8 million (land and buildings with profit multiplier)

   Bottom line: you want this building to stay on your side of the ledger. Based on standard property valuation methods, the $8 million appraised value is about right. Even if it's not an architectural wonder, it's a prominent building in the area. The tenants are a mix of empty nesters, young professionals and a good many medical students, residents, or researchers. While turnover is higher than optimal, at least the medical folks stay for several years. (And there's always a doctor in the house.)

   You see only an upside for this property because of its phenomenal location. It would be attractive as a senior assisted living facility because of its proximity to area hospitals. At some point, the university or one of the hospitals might seek to buy it (at top dollar) for use as medical offices or expanded research or treatment facilities. If that happens, the value will go up. <u>You want to hold this one, and you would count it (internally) at significantly more than $8 million.</u>

In addition to the real estate, the Nelson Family Trust now has about $4 million in cash reserves. That is likely to increase between now and when your mother passes away. There should be no dispute about dividing it in half or using it to offset imbalance in the value of the properties as agreed upon between you and your sister. (Note that, for each property, the management companies maintain modest cash reserves to cover normal operational expenses, repair, and maintenance. However, the Trust would have to fund any sizeable investments for significant repurposing or construction. These would be subject to your approval as Successor Trustee.)

You want no more conflict with Dianne, but you refuse to tolerate her villainization and will not accept an agreement that is unfair to you.

Now you have to meet with your lawyer to convey this information and discuss next steps.

Nelson Family Trust Holdings
Summary Schedule of Appraised Value Estimates, as of 5 years ago.

1) Compass Road Nelson Car Wash - $3 million (land & equipment with profit multiplier)
2) Dexter Road Nelson Car Wash - $2 million (land & equipment with profit multiplier)
3) Exeter Street Strip Mall - $3 million (land and buildings with profit multiplier)
4) Fairview Street Strip Mall - $5 million (land and buildings with profit multiplier)
5) Garnet Apartment Building - $6 million (land and buildings with profit multiplier)
6) Hoover Apartment Building - $5 million (land and buildings with profit
7) Ibid Apartment Building- $8 million (land and buildings with profit multiplier)

Plus

$4 million in cash reserves at present, likely to increase.