

Building a Cannabis Business in New York: An Operator's Perspective

9/23/2021

Presented by [Simon Malinowski](#) and [Mike Dundas](#)

This webinar audio has been transcribed by an automatic transcriber.

Simon Malinowski 0:06

All right, officially. Good afternoon, everyone. Welcome to the continuing series of webinars that we've been doing on cannabis in New York. Today's webinar is building a cannabis business in New York from an operator's perspective. And for those of you who are joining us for the first time, my name is Simon Malinowski. I'm the managing attorney of Harris Bricken, New York office and our lead cannabis in New York Attorney. I'm really excited about today's webinar. We're joined today by Michael Dundas, who founded and led one of the largest regulated cannabis businesses in Massachusetts, from the inception of its MediCal program in 2012, until he sold his company in 2019. And so for today's webinar, what we're going to be talking about are the actual practical experiences that Mike had in starting and actually running a cannabis business. With the marta passed earlier this year. I know that everyone is really excited about New York's cannabis industry, and for a lot of people who are watching today and who've been reading our blog. And this is going to be their first time actually entering the cannabis industry. And so you know, rather than talk about the kind of tangential and not really practical parts of running a business, Mike is really going to talk about what it takes and the actual practical steps that he took. And so Mike, maybe you want to introduce yourself and tell us a little bit your background and your experience broadly in Massachusetts?

Mike Dundas 1:51

Sure, Simon, thank you so much for having me this morning. It's a pleasure to be here. So I started in regulated cannabis in 2012, when I first learned that my home state of Massachusetts was going to put a ballot measure on the ballot are related to medical marijuana. And it was at that time I very similar, a little bit different in some respects, but similar in many ways to where New York is today. The ballot measure passed in November of 2012. And very quickly, a regulator was stood up and regulations were promulgated. And off to the races. We went with applications, or you know, our team worked very hard. We got very lucky as well. I think those two have to dovetail for any successful applicant together to get a license in this space. And we were awarded one of the first medical marijuana licenses in Massachusetts. And interestingly, in Massachusetts, different from New York Medical licenses. I guess I should say, unlike the adult use in New York Medical licenses in Massachusetts required to be vertically integrated. So we had to build a cultivation and manufacturing facility as well as run the retail shops. So we built at first about 30,000 square foot cultivation manufacturing facility subsequently doubled the size of that facility, and also ran three regulated medical cannabis dispensaries in the communities of Cambridge Somerville and Needham, Massachusetts.

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Simon Malinowski 3:23

That's to me really interested in the difference between Europe obviously, we have the additional vertical integration. But when you were doing this Massachusetts, almost almost with law, you had to get involved with every aspect of the production process. And I guess, as an analogy in New York, then every different license type that we're looking at, from a licensure perspective under MRTA today.

Mike Dundas 3:54

Yeah, that's correct. And I think it's interesting how New York has chosen to segment or group its license types. So really, what they've done is divide off the production from the retail. So someone who owns a retail facility cannot own any of the production licenses and vice versa. But if you're on the production side, you can get together a cultivation license, a processing license, which is essentially a license to manufacture cannabis products, and then also a distribution license to deliver those products to retailers.

Simon Malinowski 4:26

So you know, now that you're no longer in Massachusetts, are you going to be involved in New York in any capacity, or it's still kind of waiting to see how the rules and regs come in?

Mike Dundas 4:37

So I started a consulting company called navigator advisors after I left my last employment. I've been doing some consulting with folks across the country, but also in New York, around best practices for starting cannabis businesses. And I'm also looking to hopefully get involved with an applicant who will be applying for cultivation and processing licenses in New York, but we'll see how it rolls. There's still quite a bit of time before we can figure out whether or not that's going to be a viable business, waiting for the rights to come out.

Simon Malinowski 5:06

I mean, I couldn't come up with a better segue myself, and a lot of the questions that we've gotten in the lead up to this webinar, but then also really, since March is what's going on with the cannabis control board, and what are the rules and regs coming. And you know, you and I were laughing that in all likelihood, and all of this would happen literally the day before we did this webinar. And lo and behold, yesterday, the last two seats on the cannabis control barbourville, which means that, finally, we are in a position where the cannabis control board, including the chairperson, and then the four other board members have been selected. And then we also have the Executive Director of the Office of cannabis management. So, you know, I guess the first question that most people have is, do you have any thoughts on the people who've been appointed?

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Mike Dundas 6:06

You know, I can tell you from my experience, you never really know until they get started working. And you get sort of into this iterative feedback loop of promulgating regs taking questions and really hearing what their policy positions are in cannabis. But I have to say, you know, from an outsider's perspective, it looks pretty good to me, frankly. First of all, I think that the new governor did an extraordinary job in getting this, this board appointed, and including the Executive Director of the Office of cannabis management, in just three weeks in a day. And we saw the first appointments on on January, sorry, on September 1, and the last two were just made yesterday on the 22nd. So for three weeks, that's, that's record time. And in my book, and I think that, you know, each one of the appointments to the cannabis control board, if you look at their history and their background, their policy orientations, they really are quite complimentary. So for example, the chair of the board trumaine, right, I would say she's false for me into the areas for small business advocate. We can look up her background online, but I sort of think that that's probably the area that she will carry the carry the lead on. Jen Metzger, very involved in environmental and, and farmer advocacy for the Upstate farmer community. Adam Perry, a corporate attorney, has worked with big and small businesses or medium and big businesses. So sort of business advocacy, Reuben McDaniel, third from yesterday, an interesting appointment, actually, in my opinion, coming from the dormitory authority of the night of the of New York. And, you know, the dormitory authority is an agency that I didn't know much about until I started looking into this appointment. But you know, their their role is to to help fund, you know, public policy oriented infrastructure projects. And so that's kind of an interesting appointment for me and kind of, you know, raises my eyebrow about whether or not there might be additional sources of funding for certain areas of the cannabis industry. That's purely speculative on my part, but just wanted to throw that out there. And then of course, just Garcia representing labor. So I think it's a it's a very well rounded board. Of course, there is one glaring caveat there. And that is that I think none of these folks have any cannabis industry experience to speak of. But then that's where that's where the executive director, appointee comes in Jason Allen's sorry, Chris Alexander. And so you know, you might be able to talk a little bit more about your experience with Chris. But he seems to me to be an ideal choice for executive director, having worked both in politics as well as in the cannabis industry itself.

Simon Malinowski 8:45

Well, I mean, I couldn't agree with you more strongly. I mean, one of the things that are actually expressed in mrta is is the goal that this board had a geographic, geographic diversity, and that people are really appointed across different areas of the spectrum, really, from a kind of maximizing the goals of the mrta. And from that perspective, it really does seem like these appointments were very targeted and very thought through to really get it the various things that the mrta seeks to do from allowing social equity applicants to really have an opportunity here, and that goes kind of to the funding portion of it low interest loans, no interest loans, and we'll get into that when we talk about some of the questions we've received. But you know, the labor and you know, the fact that we're really looking at trying to do this in a way where we don't just have a couple of multi state operators come in and dominate the industry, but the people who are really trying to get in for the first time, have a chance of

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doing so. And you know, I think that that's, that's great, and it's it's kind of refreshing to see one that all of this happened to me quickly as it did, which you made a fantastic point on, but also that the overarching goals of the mrta were consider. And I also agree with you that I think it's fantastic that all

of that is balanced by Christopher Christopher Alexander's appointment as the executive director of the ocm. And, you know, as you and I have talked about, that's a really important role when it comes to the actual administration of the rules and regulations once they come out. And the fact that he was involved with drafting the mrta is now coming from an actual cannabis business really bodes well for balancing kind of the overarching goals of the mrta, with the practical considerations that we are, you know, we are trying to start an industry here that works, that allows people the opportunity to succeed, but it also generates a lot of the revenue that we need as a state coming out of COVID. And, you know, the only way that that happens is that people have an opportunity to both start these businesses and obtain licenses, but then actually succeed, because all of this is kind of for nothing. If a bunch of licenses are issued, but the rules are so prohibitive, that you know, within two years, everyone has gone bankrupt, and we're kind of at square one. So, you know, I I'm was really excited to see how these appointments have come down. Because it really looks like they were thought through with very kind of particular goals in mind. You know, one of the things that now we're going to be waiting for this since we've reached this momentous occasion that the full board is set up are the rules and regs. And you know, that's really the question that everyone has been waiting on. We've gotten all the questions and lead up to this. I will say that my my thought in what I've heard, is that, you know, realistically, we're looking at the six month range before we see rules and regs. I know that for Maine, right, I saw a statement that she thought that it could be within three months. That would be wonderful. I think it's a little bit ambitious, given the fact that we have as many licensed types, and we have HAMP. And we have, you know all of the things that need to be drafted. I mean, this is, from a practical perspective, a heavy lift, and we need to make sure that the rules and regulations work together. But I was curious as to whether or not you had heard anything on your end?

Mike Dundas 12:48

Well, I mean, I've heard a number of sort of predictions, but it's hard to say that any of them, you know, are going to prove accurate. One thing I can tell you from my experience in working in regulated cannabis in the past is that almost everything takes longer than you think it's going to take. And that starts with regulatory promulgation. It's, you know, regulatory revisions, it's fundraising, it's building your facility, it's getting to revenue, it's growing that revenue, like the whole thing is fraught with unanticipated delays, I think and, and so I think that's, that's sort of the first point that I wanted to make to your audience, or anybody out there that's interested in starting a cannabis business is that you can put together, you know, a reasonable timeline with all of your benchmarks. And then I'm not exaggerating, really times to really double that timeline for every single one of your benchmarks. And I think you'll probably get to the end, at that, at that double time. You may not incur delays in double in every single benchmark that you make, but you'll have, you know, three quarters or three times in one and a half time and another and ultimately, you'll end up evening it out. But it always takes longer. And I think that's going to be true for the regulation. So if I were to, to, to go out on land and make a

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prediction, I would I would say that you're probably right, we're probably looking at at six months, but hopefully sooner.

Simon Malinowski 14:15

You know, one of the things as you were making that excellent point I was thinking is you know, there is provided for in the marta. But I really do hope that they consider having a nice public comment period after the rules and regs come out, and Kerr for those of our listeners who don't have experience with public comment periods, basically that is after the rules and regulations are issued, people have the opportunity to submit questions, which is particularly relevant in this circumstance, because there are going to be gray areas there are going to be rules and regulations that aren't particularly clear and they'll give people guidance as to how practically these regulations are going to be implemented. And particularly when we're talking about the application process. And knowing as much about those gray areas as possible is incredibly important. And so, you know, my hope is that there is ample time for people to submit questions for things that they are unsure about. Because, you know, we don't know if there's going to be restrictions on the number of licenses, we anticipate that there will. But if there are, and that makes the whole process more competitive, and operating as clearly as possible within the contours of the role of rules and regulations as they come out, will be really important. So, you know, that's one of the things that I'm hoping for another real, real interesting question, and I've heard this a few times, is whether or not they're going to ultimately stagger the issuance of licenses between cultivation and the production side and retail. And now I heard, I heard a few times that there was some potentially consideration of issuing additional registered organization licenses first. And for those of you who don't know, registered organizations refer to the medical licenses, which are separate and apart from adult use, recreational. And, you know, my personal hope is, that's not the route that they go down, but that they expedite the rules and regulations and applications for adult use cultivation. And because, you know, you and I've talked about it, I think that there are potentially some real headstart provisions in the marta for registering nations, particularly 10 of which already have licenses. And if we're really talking about people starting on the same foot and having an opportunity to succeed, and giving them any sort of additional headstart is probably not great in the anti monopolistic anti competitive perspective. And, but certainly, my hope is, the way that they go about this is that cultivation gets the shot at it starting first so that by the time retail licenses are issued, we have enough supply to meet the demand. Because if we don't, it's, it's going to be a problem.

Mike Dundas 17:30

Yeah, that makes a ton of sense to me. And, you know, again, it's impossible to really know for sure in advance what those regulations are going to look like, exactly. But another point I would make to, to folks that are watching or interested in applying for these licenses, is the importance of following that regulatory release process. And really digging into those regs, typical business owners, you know, often have better things to do than to than to read regulations and guidelines. But in the cannabis industry, it's a little bit unique, those regulations and guidelines can really have material impact on your business

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plans. And so things like canopy limits, you know, even testing requirements for the product. And we can talk a little bit about that, because that's an area that I think is often overlooked. In regulatory promulgation, everybody wants to know how many licenses are going to be granted what the canopy is going to be, you know, what the regional distribution might be. But there's a real bottleneck when it comes to testing. Typically, what you'll find in other states, I think you'll find this in New York is that all

of the regulated cannabis that makes it onto a dispensary shelf has to be tested for a bunch of different contaminants as well as for its potency. And so without clear guidelines and reasonable guidelines about the types of things to be tested for, and the limits, that those tests are required to adhere to. Those are real issues for for the supply chain. So I would say, you know, practice point number two, watch those regs, read them carefully, get good advice on them, if you don't understand them, and to the extent that, that you are able to participate in the public process, it's my understanding that once the regs are released, that there will be a 60 day window for public comment. And then the regulator will take those public comments and assimilate them into into a revision of the regs and that if there is a material revision, which I can't imagine that there won't be after the first round of public comment. Then there's another 45 they released the revised and another 45 days for additional public comment before the final regs are issued. So that might also be a benchmark for folks to to put in their calendars is that once we get the initial first draft, we're probably looking at somewhere between four to six months until the final draft of those regs are actually released.

Simon Malinowski 19:56

And this is a good reminder and a little bit of self plug for us. And we, the Canna Law Blog are going to obviously be monitoring this closely. And, and writing about all of the rules and regs and all of your public comments and any revisions that come out. And so for those of you who are listening, who do not subscribe to the Canna Law Blog, or follow us on social media, and I strongly suggest that you do so. Particularly if you're interested in pursuing one of the licenses. So I think this is probably a pretty good transition to talking about your actual experience, because, you know, you have gone through the process in entering a state that has just issued rules and regulations and starting a cannabis business. And so, you know, I think kind of the first question that I have, and I think that most of our listeners have said, once you've seen these rules and regs are coming out, or that you have decided that you're planning on applying for a license, what are your first steps?

Mike Dundas 21:08

It's a great question. And you know, some of these things are very obvious. And some of them may not be so obvious. I think we've seen now the statute, so we know roughly what types of licenses are going to be available. And there's a number of them, I don't even know if I can read them all off the top of my head, there's more in New York than there are in Massachusetts. But the the big ticket ones I think will be most sought after are the cultivation license, the process for license, perhaps the distribution license. And then really, there are three classes of retail license that are contemplated, as far as I can see. And

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one is a straight brick and mortar retail dispensary. Another is retail delivery, which is an important license category. And we can talk a little bit about that if you'd like. And then also the area of social consumption. So they're, you know, like similar to, to a bar, a venue where folks could come and purchase cannabis products and actually consume them on premises. There are also a number of other license types, micro business license types, cooperative nursery, that type of thing. But I think, you know, we've only got an hour here. So I think that probably most people are interested in cultivation, processor and retailer. So we can focus on those. I think, right now, it might seem like it's very early in the process. But it's not, it's not that early, these are going to be very competitive applications and to put your best foot forward, I would certainly advise starting the process as soon as possible.

And I think the first question you got to ask yourself is which license type are you looking for? And then from that a whole bunch of other questions can follow, you know, what type of organization do I need to form? What type of talent do I need to look for and bring on board? And when? And of course, what's the level of funding that I'm going to need? And where can I look for those funds? And so all those questions are relevant, I think, you know, very briefly, you know, going from most expensive to least expensive, I think the cultivator license is probably the most expensive license, you're either going to have to build a ground up facility, or you're going to have to put out a sizable in the case of farmers you could do with an outdoor farm, although the the ambient climate in New York is not ideal for year round cannabis cultivation, so an outdoor farm would very likely be limited to the growing months in the spring, summer and fall. And then there's the processor license, which is essentially a you know, it's analogous to a food products manufacturing plant. And so there's quite a bit of capital that would be required expertise required to design and build a facility like that. And then the retail licenses, which are probably the none of these businesses are easy. So I don't I don't want to use the easy word. But probably the the least onerous of the license categories to start. And and for a retailer, I think the primary, the primary thing that you'd want to do is trying to find a retail property, or at least be the beginning that process to look for a property talk to landlords, if you own retail storefront property that you're currently operating a store out of that you might want to convert. That's an ideal situation in many cases. Of course, you also have to look and I'll end here with, you know, what is your community? What is your community stance on cannabis? As you know, Simon, this statute does allow for communities to opt out of retail and social consumption licenses. And so they've, they've got a limited time to do that. But they're it's my understanding, there are a number of communities that have already done it, and a number of communities that are thinking about doing it. And so you want to make sure that in your local environment, you understand what the rules and regulation are around starting a dispensary.

Simon Malinowski 25:03

I think that the local community, part of it is really important. Because it, it really is potentially a disqualifier, depending on where you're looking to operate. And I totally agree, I think that we've been pretty clear in a lot of the other webinars, we've done in our blog posts that, you know, points one and two are identifying the license type that you want to go after, and the geographic area that you're thinking about operating. And, and, you know, there whether or not your geographic area has opted in,

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is really important, I think on two levels. The first is obviously the black and white, you're considering pursuing a retail license, and you want to open a business in an area that has opted out while you probably need to look at a new area. And the kind of softer consideration is, even if you're interested in operating a cultivators, like a cultivation facility, or processors license, if you're in an area where it's kind of decidedly anti cannabis. Even though they can't expressly prohibit it, there are a lot of considerations that, you know, can make your life harder as an operator. And you're going to have to probably undertake construction in terms of building out your facility, which requires permits and cooperation and utilities. And so it's just another consideration in terms of looking at potential areas where you're going to choose to apply for a license. And there are a fair number of resources available now. Where

you can see what various municipalities have done thus far. And what's kind of on the horizon. And interestingly, a number of municipalities have expressly opted in to retail and on site consumption, which wasn't really contemplated under mrta. But it's a great thing to see, because they are now taking the affirmative step of declaring who, you know, we are going to participate in this industry. You know, on a more granular level, you know, once you had made the decision that you were going to pursue an application and a license in Massachusetts, you know, were there specific portions of your team that you started to look for? How soon did you start looking for real estate, you know, what was the actual timeline that you, you kind of encounter between making the decision to go after a license, and then starting to take tangible steps?

Mike Dundas 27:58

We probably had about a six month period, prior to the enacting of that ballot initiative where we were really looking at this, we saw that it was proposed, started really thinking about it once the ballot initiative passed. However, it was really full steam ahead. And that's analogous to the statute in New York that passed at the end of March. So it really is, I say, should be full steam ahead for any folks who are serious now about finding these applications. You know, getting the right mix of people on the management team is critically important. And again, it depends on the type of license that you're pursuing. You know, business experience is always a plus, obviously. But if you're going for a cultivation license, you're going to have to find, you know, someone that knows how to grow cannabis and preferably, in the context that you're trying to grow it at some form of scale, presumably, in the on the retail side. You know, it's interesting, there's, there's, there's a sort of an ongoing debate in the industry around what makes for the best type of retail cannabis dispensary managers? Is it folks that have more cannabis experience that really understand the product and the products that you sell and are able to explain that to customers and make customers really feel loved and wanted and respected? Or is it the the sort of hardened business retail manager types that may not have any cannabis experience, but they know how to run a budget, they know how to run a team. And I think you're really trying to find if you can, which is very rare, you know, that magic person that's got both? And if not, you really need to try to bring both of those skill sets to the table. You know, one thing I would go back to and emphasize again, we've said it twice, but I think it's important to re emphasize for a third time is the community outreach in the early stage of the process, your ground game is incredibly important. And you know, it's interesting, I came to find that you can't always discover, you know who the power brokers are in any

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particular community by looking at the org chart, right. You've got a mayor, you got a city council, you've got a supervisor, you've got a town board, you got a village board. You know, those are the people who are named Oftentimes, there's a network of influencers that are not on any of those org charts that really have disproportionate influence over the community. You know, maybe it's a local pastor, maybe it's a local community advocate. Maybe it's a local business person. But I think that doing the work of trying to uncover, who are the folks that have influence in the communities that you're looking for, and to try to figure out first, what's their position on cannabis. And then, you know, hopefully, if it's a, you know, if they're favorable, that you can get in and really talk to them and present them with your proposal and try to win their approval prior to, you know, even really finding your real estate and getting out there, and, and making an application.

Simon Malinowski 30:45

So, you know, the real estate part of this is interesting, and it's something that we've written about, obviously, under the mrta, we'll wait to see what the rules and regulations say but are non social and economic equity applicants actually having real estate in place, that application is a requirement, we're waiting to see how that shakes out for social and economic recovery Africans, it looks like there might be kind of a caveat. But you know, when you are going through this process, how soon did you start looking for real estate? in Massachusetts? I don't know if it was a requirement, pre license application. But what was your process for that?

Mike Dundas 31:28

It was a, it was a tough process, we did start right away. And I'm glad that we did, I think that was part of the reason why we were able to be successful and getting a license. You know, we we employed a screening process that involve multiple layers, you know, you've got to find your community that's predisposed to it, you've got to find a property that's going to work for your use, you got to find a landlord, if you're not buying the property, if you're going to lease the property to find a landlord that's going to be amenable to cannabis use. And oftentimes, you know, in a, in a state that hasn't had recreational cannabis like New York, you might, you might get some pushback from local, you know, property owners. And so all of those things have to fall into place. There may also be, you know, regional distribution issues, depending on your license type, and, and population, you know, are you if you're a retailer, are you in a densely settled area, you really don't want to put a retail facility out in an area where there's not many people, frankly. And so all of those layers come into play. And because there's so many layers to pay attention to the earlier you get started at it, the better because you'll end up chasing a lot of dead leads, before you find that magic spot.

Simon Malinowski 32:41

How is your process for looking for the magic spot that you guys will obtain a broker or real estate broker early, with a kind of more feet on the ground, exploring options.

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Mike Dundas 32:51

Now, it's really interesting. And I think that a lot of folks that ended up getting licenses in Massachusetts, and in cannabis, you know, do employ a lot of a lot of consultants and a lot of brokers and a lot of other service providers. For us. And for me, I was, you know, we were very bootstrapped. And so we frankly couldn't afford, you know, to, to do it, it's a miracle. It's a miracle that we got one of these licenses, honestly, we did it all ourselves. And it was just, you know, hard road 24 seven, work. You know, I was living in San Francisco at the time, I'm born and raised in Massachusetts, but was living in San Francisco. My wife was out there working and I just, you know, we sat down and I said, I really like

to take a run at this. I came back and you know, lived on my mom's couch for over a year, going back and forth by Coastal Well, my wife was supporting us. And so it was a very, it was a very difficult thing to pull off. But ultimately, ultimately, if you put in the hard work, you can do it yourself. But you just got to put in the hard work.

Simon Malinowski 33:58

Yeah, I, you know, it's, there are so many considerations and so many moving parts, that that makes a ton of sense. From the kind of pre licensure perspective, you know, what were the biggest pitfalls that you saw, or, you know, not not even potentially even mistakes that you guys made that if you were doing it again, you would have avoided or if there were things that you saw other people doing that kind of tanked the process early.

Mike Dundas 34:32

I think it depends on the type of licensing process that New York is going to roll out. If, if as in Massachusetts, they actually say we've got a cap on the number of licenses we're going to give, it becomes much more competitive, very quickly. States have tended to move away from from that model, and we'll see when the regs come out what model they use. That was the model that Massachusetts used in the in the in the medical phase. When it moved on Massachusetts moved on to the adult use licensure, they decided to abandon that model, and basically just set out a list of very strict criteria, and anyone that could meet the criteria would ultimately get a license. So, you know, I think we're all hopeful that it will be the ladder system that's employed in New York. I mean, there's a third system has been used, in some cases, a lottery system, which I think is not ideal for for anyone.

Simon Malinowski 35:26

There was a lot of news, I think I saw today on what's happened with Illinois lottery. And it seems like it was not the most what call it efficient way of going about the process of ordering licenses.

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Mike Dundas 35:44

Yeah. Yeah. I mean, I think that I it answered directly to your question, you know, what, what did we do? Well, what did? What could we have done better? I think, really, business fundamentals. Play into cannabis in ways that people don't often think about, it's just the nuts and bolts of starting a business with discipline and with a plan, write down your business plan, refine it, and revise it as you get new information. If you put a business plan together now, and the regs come out, and there's some reg that you know, just doesn't, doesn't, you've planted, you know, sort of dominate with a million square feet of canopy and then the right comes out and says you're limited to 100,000 feet, you got to pivot and and rewrite that plan. And there could be dozens of rules that may impact may impact the business plan. And you know, another thing is, think carefully about the business that you want to that you want to

build, and have have reasons for why you think that that business is the is the business you want to build and then stick to it. One of the things that I think a lot of folks in cannabis fall victim to is what we call shiny object syndrome. There are so many opportunities in the cannabis space, that oftentimes people pivot too much. They run it one thing, and then another opportunity comes along, and the whole plan changes to chase that and then another opportunity comes along and it looks good. And the whole plan pivots to change that. I'm not a huge fan of that I've seen that. You know and in, in tears for a lot of a lot of folks. I'm much more on the side of make.

Simon Malinowski 37:16

I think we had a split second of technical difficulties. But I think this is probably a good place to transition. And so, you know, at a certain point, if you're lucky, and you do everything right, and you've been awarded a license, which you experienced, and what's the first year like you now have a license. In your case, it was vertically integrated, but you now have an efficiently licensed cannabis business, you're open for sale to the general public. And now you have to run a business. What's the first year like?

Mike Dundas 37:57

I would describe my first year as a mixture of elation and terror. And in probably, I wouldn't say equal parts probably more terror than elation. But there were little bits of elation. It's, it's very exhilarating. It's fun. It's gratifying to get success to win a license to open a business and to actually see customers coming in, you know, to buy their first products. That's It's an extraordinary experience. At the same time, you know, these businesses, the cannabis industry in general, when you read just the headlines, people often talk about the sort of aggregate sales numbers that we're projecting for five, seven years out in the billions of dollars. money grows on trees, generational wealth, are terms that you hear all the time in cannabis. The fact of the matter is that for most cannabis, businesses, boots on the ground, it is very difficult to turn a profit in the early days. And so I wouldn't we hurdles that normal businesses don't face quite frankly, our cost of capital is extraordinarily high. Well, you know, typical businesses will get

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on for three, four or 5% cannabis businesses would be lucky if they got a loan that's under double digits. When I first went into the space, I had loans at 18% 15%. And you know, if they're big loans, if you're if you're carrying multi million dollars, you know, under those conditions, those are big interest payments that you have to make. And so you really need to plan very carefully and control costs in every way that you possibly can. Another area is taxation, and for those who've been around the space enough to know, we've got a draconian tax policy at the federal level, and what's often misunderstood is that state tax authorities will often follow federal tax rules and so you end up with this, what we so called so called to add tax treatment, which is essentially that cannabis companies big or small, cannot take any deductions and he cuts To marry an ordinary business deductions on anything other than their cost of goods sold. And for, you know, for retailers, that means the price they pay for their product at wholesale, every other expense that you have, is not deductible, as it would be for any other business. And that ends up with get, you know, giving retailers effective tax rates of you know, 5060 70%, sometimes more, depending on, you know, how the business is run. And so, you know, making a plan

sticking to the plan, cutting costs, containing costs, are all the things that would be keeping me up at night in the first years of the business.

Simon Malinowski 40:42

What's it like to that end, right? Because right now, it's all very well and good. And we're all very excited about the industry starting, But to your point, at the end of the day, for every person who obtains a license, this is the business, the goal is to reach a point of profitability and to have a successful, stable operating business. So you know, from your experience, what were the important steps that you needed to take, to reach financial stability and to be get to the point where you not only now have a business, but you have a business that's going to be sustainable in the short, medium, and hopefully long term.

Mike Dundas 41:25

It's, again, it's all about business fundamentals that would apply in any industry. Focus on your customer. And you know that that is applicable across the board. If you're a retailer, you focus on the retail customer that comes through that door. If you're a wholesaler, a producer or a cultivator or a producer, you got to focus on your retail clients, your retail dispensary clients, your your your social consumption clients, your delivery operator clients, really putting together a plan that is going to provide products and services that meets the needs of those customers is, you know, is and should be the lodestar for every business owner out there. And so you know that and again, in concert with, you know, financial discipline, not chasing every shiny object and throwing money behind it, because you think it might, it might turn a profit. But sticking to that plan that you put together and the reasons why you put that plan together. And I think that's really the fundamentals. It's amazing to me how many folks go astray just by veering from from those very basic tenets. And then of course, the last one is cost cutting. And I think you know, in cannabis, a lot of folks again, they're they see it as a build it and they

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will come type business, it doesn't really matter if we spend a little more on this or spend a little more on that. Once we open the doors, you know, they're going to come pouring through. I can give you a quick anecdote for us. You know, we expected in our projections that we were going to get x number of medical patients through the door on day one, we built these beautiful dispensary facilities. You know, we planned to have the opening on a Wednesday, right? It's Monday, where they're putting the finishing touches on it. And you know, nobody actually knocked on the door to see if we were open and move. So okay, Tuesday comes, you know, polishing the cash registers, nobody knocked on the door, see, if we were open yet. Wednesday comes we make the grand announcement, hey, if we swing the door open, nobody was there. And so, you know, planning your, your marketing planning your sort of public impression of, you know, how can folks find you? When can folks find you? You know, again, it sounds like business 101. And it is, but it's amazing how many times people will overlook just basic business fundamentals, because they think cannabis is is different. But we didn't make that same mistake again in the second and third dispensary.

Simon Malinowski 43:50

So, you know, I think that kind of brings us to an interesting question. And, again, we'll have to wait and see what the rules and regs are. But when you're talking about cost cutting in the cannabis context, you know, there is the potential, the rules and regs in New York will have some version of price spec saying that there will be set profits are going to be allowed. And there's going to, it's going to be interesting to see how the interplay works between the different license types and what can be charged from the production side to the retail side. And so obviously, from that perspective, there is at least the potential that some costs will be in some version fix taking out considerations of scale. You know, what are kind of this soft costs that are a little bit easier to control that, that are, you know, some of the variables that you're looking at from minimizing cost once you've started operating.

Mike Dundas 44:51

I mean, it's different depending on license type, different license types are basically different types of businesses. You know, on the retail side, I think you're number one Cost is labor. And so you know, you can control labor costs. Interestingly, New York is going to be a union state, in order to apply for a license, you're going to have to have a labor peace agreement in hand executed. That doesn't mean you're going to be unionized necessarily. But it seems very likely to me that that unionization is coming to this industry, as it probably should. However, you know, trying to figure out how you can work with your employees with the union in order to get the right mix of folks in the door. And I would say, you know, start up is, is a critical time what you know, before you start up, you've got no real data, you know, all you're going on is sort of anecdote what you've heard from other stores what you think might happen. This is a brand new industry in New York, right?

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We don't have any retail establishments, for adult use cannabis in New York today. So there really isn't any data to look to. And so I would say, you know, the old adage, start low and go slow, we say that when we're talking to patients about how to consume cannabis, I would give that same advice to business owners, when it comes to incurring costs upfront, obviously, you don't want to skim in critical areas, you want to have enough product on the shelf that you don't run out. Hopefully, that could be another issue and often is, by the way, and new and emerging cannabis markets. But you also don't want to overspend and you know, in Massachusetts today, by way of example, we're already five years into the adult use program, there are still dispensers coming online, and folks are still under the under the sort of impression that these are build it and they will come type businesses. And you know, it's not uncommon to walk into a brand new dispensary, you know, 5000 square feet of retail space, 25 people behind the counter, and, you know, maybe one or two customers. So it's a really, I don't think that's going to happen, it's really gonna happen in the early days here. I don't think it's going to happen in the early days in New York. But it is a sort of note of caution to everyone that's thinking about, you know, putting these businesses together, have a plan. And I think that plan should be to ramp up rather than to, you know, be in the position of having to ramp down if you don't get those sales that you immediately predict.

Simon Malinowski 47:18

Yes, it's, it's an interesting thing, when when you talk about kind of starting small and looking to expand rather than the reverse, you know, based on what you're describing, it sounds like a really critical thing, here is some version of marketing and getting your name out there. You know, what was your experience in terms of gone about that? Because, you know, well, I think we all kind of envision that New York is going to be a very competitive market, either without license caps, or with license caps, but in either version, and, you know, particularly in New York City, it's not that hard to get from one place to another. How do you maximize kind of getting your people through the door and purchasing product?

Mike Dundas 48:10

That is a very, very difficult question to answer. Because just like in the areas of banking, in the areas of taxation, cannabis has really, you know, quite restrictive rules, to put it mildly, on the advertising and marketing. And so that's another area of the regulations that I would very much encourage business hopefuls in this space to look at very carefully, what can I do, what's what's allowed and what's not allowed that there's your first pass right there. Because if you're already a business owner, and you're used to using social media, Facebook, Instagram, and other ways to promote your cannabis business, those avenues might not be available to you in the cannabis space, then we've seen a little bit of movement. You know, Apple recently just announced several months ago that they would allow more cannabis apps on their platform on the on the iOS Apple Store. But I think it's still safe to say that on the major social media platforms, it is hit or miss at best to be advertising or putting the word out there for commercial cannabis sales. You might see a lot of stuff on Instagram about sort of home grows and advocates and this type of thing. You don't see a lot of straight up commercial sales by regulated

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licensed entities. And that's because now it's my understanding that Instagram still prohibits that type of activity. So like, you know, it's interesting in Massachusetts, which is, you know, probably won't be New York, for sure. But we may see similar restrictions, you can't advertise on TV, you can't advertise on the radio. You basically can't advertise anywhere that you can't demonstrate with third party data, that over 85% of the audience is 21 plus. And that's a real tough bar to meet. And so what's happened, interestingly is that billboards have become all the rage in Massachusetts. So apparently, there is data for major highways around Massachusetts to show that most of the drivers it more than 85% or over 21. And so billboards have been cropping up all across the state. You know, it's funny, I'm personally I'm not a huge fan of billboards, no offense to anybody in the billboard industry. But when you compare parts, to, to the type of feedback that you can get from electronic advertising today, it's night and day, like you get zero feedback from a billboard. Of course, I just said that, you know, electronic advertising is precluded. So like, Look, this is all that's left. long and short of it is, it's very difficult those folks that, that get very creative with the ways that they can market their businesses, and as early as possible, I think you're gonna enjoy more success than those who wait.

Simon Malinowski 51:00

That, that makes a ton of sense. And it's, you know, really just kind of one of the most interesting parts of this, which is, once you get going and considering the extremely regulated nature of the industry, like,

how do you maximize your opportunities? Well, with on that point, and I think with about 10 minutes left, I thought what would be good is we've got it as a number of questions that have come in, and then a few that were submitted in advance, and I figured it would be a good opportunity for you and I to kind of talk about some of them. One quick one that I did see pop up several times, including today are questions about micro businesses? And the answer is, as of now, we are all waiting for the definition of micro business. And so really, nothing can firmly be answered in terms of the direction of that license type. Until the rules and regulations come out. We know that New Jersey has issued their rules and have their created their definition of micro business. We don't know what it'll be yet for New York. And until we see that it's really just hard to answer any tangible questions about micro businesses and where that's gonna go. And another question that that popped up and that I think you and I briefly talked about, was the potential for finding investors and what the process is for that. And, you know, what was your experience? Or, you know, any kind of general tips on that point?

Mike Dundas 52:51

I think, again, I, you know, I hate to, to constantly be the bearer of bad news, but I think it's important for folks to understand this going in that it's, it's challenging out there funding for cannabis businesses. You know, even though today, it's probably the most favorable funding environment that we've seen, certainly makes a fundraising effort that I had to undertake several years ago, many years ago. Now. Look, you know, very difficult By comparison, but you know, my experience was, gosh, when I first got into the space, I naively thought that I could get a loan from a financial institution. And interestingly, in

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Massachusetts, because because medical marijuana was so new, there were a number of loan officers at financial institutions that would take the meeting and would listen to the pitch. And invariably, they would run the request up the flagpole, and the legal department would send it right back down. No, no. And so, you know, I ended up really going on a mission to try to find the ideal private investor for cannabis. And for me, that was, you know, usually had to be high net worth individuals or very small family offices, folks that, you know, that could take outside risk with sizable amounts of money. But that wasn't enough. I had a lot of meetings with those types, have the door closed as well. It wasn't until I found folks that both fit that description as well as for whatever reason, sort of saw over the hill on cannabis had a belief that the cannabis industry was going to be something that that was that was quite spectacular. And I was very, very lucky in finding just one of those folks at first, who then brought me to a network of other folks of like mind. Today, there are a number of cannabis, you know, so called cannabis private equity companies out there, but they're relatively small and you know, I say small, I think that the average size is somewhere between 50 and \$100 million. You know, when you compare that to traditional private equity, those are those are micro businesses in themselves in the private equity community. And so there's not a lot of money to go around. And that money is often, you know, comes at a price. It can be very dilutive to owners. And if it comes in the form of loans, like I said, those loans can come with double digit interest rates. You know, an interesting development that has started to come to fruition is this idea of crowdfunding. And, you know, I caveat this, this whole idea of crowdfunding with the notions that it's brand new. And it is probably there, there are a number of crowdfunding platforms that have cropped up that will purport anyway to allow you to list your cannabis company and raise money. That way, I'd be very careful about about those and that the the management teams and the reputations of these platforms to be sure you're dealing with someone

reputable. I'd also point out that when you look at some of these crowdfunding platforms, and you actually see some of the projects, they'll show you, you know, how much money they're trying to raise, and how much money they have raised. And, you know, typically, these companies have raised in the in the low 10s of 1000s of dollars. That's not generally enough to launch even a even a dispensary business. I think if you're coming in to the dispensary space, without a property that you own, you're looking to lease property and then do everything from scratch. You're looking at startup costs somewhere between, you know, one and \$2 million. You could probably do it for less if you got really scrappy, and you were really clever, and you work 24 seven, but I think for most people, that's probably the price of admission. And it just goes up from there when you get to a processor and then cultivator. So I hate to sound a downer on this. But this is just another one of those avenues like, like local community support that you need to jump on and jump on it quickly. And, you know, this is another area that that you can really do yourself a lot of favors by, again, planning out a strategic business plan that is supported by data, getting an idea for a business, that sort of business thesis, and throwing everything else by the wayside. And sticking to that when you get into those investor pitches. I think you can really distinguish yourself from other folks that are chasing shiny objects. If you have a real discipline focus on how you want to build your particular business.

Simon Malinowski 57:22

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So one thing as you were talking that I think absolutely bears mentioned, and particularly with respect to crowdfunding, is, I think it's incredibly important for people to be mindful of the fact that the mrta expressively precludes ownership and different license types. And so one of the things that I would caution people, is to make sure that if you are taking money from a potential investor, that they have not also invested in a retail business if you're seeking cultivation investment, or vice versa. Because it would be one of the things based on the MRT. And again, we'll wait to see what the rules and regs say that could shoot you in the foot from an application perspective. I know that we're running out of time, there were a couple of questions that came in that I do quickly want to hit on. One is questions about government funding, particularly in the context of social and economic equity applicants, because as Mike was just saying, we are we are talking about high capital costs in order for the likelihood of success and actually starting a business. And under the mrta. There is Express language that talks about the creation of low to zero interest loans for social and economic equity applicants. I've heard Senator crystal people Stokes talk about potential grants, and a variety of other resources for people who are new to the industry. In terms of getting themselves up to speed, we will wait to see what actually develops. But to bring it full circle, one of the things that's very refreshing to see is based on the composition of the cannabis control board, it looks like we're in a good position for these actual programs to get created and to give people a better chance of success and getting the resources they need. And I also saw a question come in on alcohol licence holders, and onsite consumption at the mrta could not be more clear. There cannot be an intersection between alcohol and cannabis. If you are a bar, the way that it is written now, to not apply for an onsite consumption license, get it and then sell both. So bright line between the two which is really in line with everything that we had heard leading up to this. Before we kind of do our goodbyes and thanking you, Mike. For coming in, and I think this fantastic

webinar that was incredibly informative. And with the catalog blog, we'll be doing a webinar on October 19, which is a Tuesday on cannabis litigation. And what you need to know anyone who's interested in learning the ins and outs of cannabis litigation and concerns that come up. And we strongly suggest that you register. Mike, I cannot again, thank you enough for joining today. I think this was fantastic and very informative. And, you know, hopefully, it's the rules and regs come out, we can do a follow up.

Mike Dundas 1:00:37

Well, it's really been my pleasure, Simone, thank you very much for having me.

Simon Malinowski 1:00:41

All right. Thank you, everyone. And, again, follow us on social media to Canna Law Blog and all of our up to date news comes out there. Thank you all for joining

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