

GOVERNMENT

Lawsuit Reveals How Silent Pot Investors Can Subvert the System

One of the major selling points of Prop. 64, the state measure legalizing marijuana, was that the people running marijuana businesses would be forced into the spotlight and held accountable. A local case highlights how easily state and city protections can be dodged if the financial interests behind a marijuana business decline to reveal themselves.

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The Balboa Avenue Cooperative marijuana dispensary in San Diego. / Photo by Adriana Heldiz

A San Diego businessman with ties to the illegal marijuana market has outed himself as a silent investor in the legal industry.

The city attorney's office in 2014 brought a civil suit against Salam Razuki for allegedly hosting an unlicensed dispensary on his property. He did not admit to wrongdoing but settled the case with a fine and a promise not to use his land for "unpermitted" uses in the future.

There was nothing in [the settlement](#) that prevented Razuki from getting into the legal marijuana industry, and there doesn't appear to be anything in city or state rules that would automatically disqualify him.

Still, [he wrote this summer](#) in a legal filing, "I was concerned with having my name on any title associated with a marijuana operation." Instead, one of his business partners, Ninus Malan, became the public face of the companies applying for state licenses and local permits.

If true, Razuki's own words threaten to bring down some of the same marijuana businesses in San Diego that he says he's trying to save. He may have caused more trouble for himself by not being upfront.

Proposition 64, which legalized marijuana for adult use in 2016, did not prevent black market players from going legit. But one of the state ballot measure's major selling points was that the people running marijuana businesses would be forced into the spotlight and held accountable going forward.

Razuki's case highlights how easily state and city protections can be subverted if the financial interests behind a dispensary or growhouse or lab decline to reveal themselves. In doing so, Razuki has exposed a loophole in the regulatory process allowing anyone, with a little distance from the public, to make money off the new industry.

The practice appears to be more widespread than is publicly known, and last year the California Legislature quietly passed a bill to encourage better business practices and disclosure among marijuana financiers.

Now, Malan's attorneys say the city of San Diego is [conducting a tax and compliance audit](#) of the Balboa Avenue Cooperative, a Kearny Mesa dispensary and one of several marijuana businesses that Razuki claims to rightfully own.

None of this would have become public if it weren't for rising personal and professional tensions between the two businessmen. Attorneys for both declined to comment.

Razuki is in an odd legal position. Although he wanted to avoid attention by silently investing in a dispensary, he's suing because he believes that the legitimate businesses he helped capitalize and create are being stolen from him.

In a lawsuit filed in July, Razuki has claimed his interests in six companies that manage the properties or own the land on which various marijuana operations sit. He alleged that Malan tried to cut him out of several operations by quietly signing a deal with another management company and possible investor.

Razuki pointed to an agreement that he and Malan signed in November 2017. It stipulates that after Razuki's initial investments in the marijuana businesses were paid off, he'd be [entitled to 75 percent of the profits](#) and Malan would be entitled to 25 percent.

At the same time, Razuki said he'd pumped millions of dollars into the Balboa Avenue Cooperative and a marijuana distribution and manufacturing company — both of which are licensed by the state and permitted by the city — as well as a cultivation facility that is still going through the regulatory approval process.

Razuki also claimed a 20 percent stake in Sunrise Property Investments and a 27 percent stake in Super 5 Consulting Group, which manage and own the land under Goldn Bloom. That dispensary, located in San Diego's Stockton neighborhood, is also licensed by the state and permitted by the city, although it is not managed by Malan.

In court papers, Malan denies that he improperly sought new financial partners. He alleges in a cross-complaint filed last week that Razuki is [falsely claiming to be the rightful owner](#) of several marijuana businesses and his actions have caused "not just damage to his profits, but also damage to the companies' reputations with their customers and government regulators."

The businessmen have worked together for more than a decade. Malan managed various [properties for Razuki](#) and looked up to him as a mentor, according to court documents. But their relationship began to deteriorate late last year.

Malan said he and Razuki mutually agreed to go their separate ways in early 2018, rescinding the earlier agreement. Malan said he walked away with Balboa Avenue Cooperative and its

related marijuana businesses.

The two have been hurling serious allegations at each other for months. It's now up to the court to parse through the many contradictions.

In the meantime, it's not clear whether the state has ever vetted Razuki and, if so, what it concluded about his involvement in the marijuana businesses that bear Malan's name. The California Bureau of Cannabis Control declined to comment on litigation between Razuki and Malan and denied a VOSD public records request for more information, arguing that its investigatory files are confidential.

State regulations define the owner of a marijuana business several ways, including as someone with 20 percent or more interest in the company that applies for a license. These owners are supposed to go through a background check, but there are exemptions for certain types of financiers, including property lenders.

At the same time, San Diego requires property owners as well as anyone "with a financial interest in the application," who owns more than 10 percent of shares, to disclose themselves so that city decision-makers know whether a potential conflict of interest exists. The city's definition of financial interest extends beyond people and corporations to partnerships, estates, trusts, receivers and syndicates.

"If someone who provided the funding for a marijuana business falls within this definition, their identity must be disclosed," said Scott Robinson, a city spokesman.

Lance Rogers, a marijuana attorney in Encinitas who is not involved in the case and who reviewed Razuki's original complaint at VOSD's request, said the way Razuki structured his investments is key to knowing whether he should have disclosed himself to the state.

In other words, what kind of lender was he? His own complaint is not completely clear.

If Razuki financed the purchase of the property, there's a case to be made he didn't need to disclose his involvement, Rogers said. But if Razuki loaned money directly to the business, one could argue he did need to disclose himself.

The November 2017 agreement between the two businessmen says Razuki was entitled to profits on the businesses, suggesting he had a direct stake in the operations, not just the

property.

“The parties may have difficulty enforcing the rights in this case if they did in fact withhold information from regulatory agencies and could in fact end up in more trouble due to those discrepancies,” Rogers said.

At some point, Razuki is likely to deal with the legal concept of “unclean hands,” which allows defendants to argue that the courts shouldn’t render judgment if the complaint stems from the plaintiff’s potentially unethical behavior. Malan’s attorneys raised the point early, but there’s a more urgent matter to resolve.

While the underlying claims of the lawsuit are being considered, the San Diego Superior Court has placed control of the Balboa Avenue Cooperative and its related businesses in the hands of another property manager — a receiver — who came recommended by Razuki.

For the next couple months, the receiver’s job is to keep the businesses afloat and help establish some basic financial facts for the judge. If the receiver remains the court-appointed owner of the marijuana businesses, he and not Malan could be required to go through next year’s licensing process with the state.

That could be a problem: Malan alleges in his cross-complaint that the dispensary, while not under his control this summer, [failed to account for all its inventory](#) and therefore may have violated state rules.

His attorney has also raised the possibility of being denied a permit on the city level. One of the businesses named in Razuki’s complaint, a cultivation facility, is due for another public hearing and any delay in that process could jeopardize the business.

To promote better business and legal practices in the industry generally, Gov. Jerry Brown last year signed [a bill](#) that required state courts to recognize and enforce marijuana contracts. Some judges had been reluctant or unwilling to honor those deals in the face of federal opposition to marijuana. The bill also recognized attorney-client privilege for marijuana operators, so long as the advice they were given complied with local laws.

Katy Young, a partner at Ad Astra Law Group in San Francisco and president of the National Cannabis Bar Association, said ownership disputes are “extremely prevalent” for three reasons:

Some investors don't want their families to know they're associated with marijuana, some have ties to publicly traded companies and others have criminal records.

"It is often the case that one or more partners in a business does not actually put their names on the publicly filed documents ... and later on when there's a dispute, the one on the paperwork says the other is taking it away," she said. "It's ripe for abuse."

A common way to avoid revealing oneself is through real estate investment. As Young explained, a lot of marijuana businesses are multi-entity structures: One company holds the license, another does payroll, another owns the land and still another acts as the landlord.

Although Proposition 64 was supposed to provide local communities with transparency, many of the marijuana businesses with undisclosed owners appear to be older. The businesses that formed closer to Jan. 1, 2018, the official start of legalization, as opposed to those medical-only operations dating back to the 1990s, generally have a better sense of the rules, Young said.

The Balboa Avenue Cooperative has been troubled from the start.

The dispensary's original permit was secured by Michael Sherlock, a professional skateboarder. After he [committed suicide in December 2015](#), his business partner, Bradford Harcourt, entered into negotiations with Razuki to purchase the property and team with Sherlock's former co-op.

The new partnership didn't last long. Harcourt's attorneys have alleged in a [separate lawsuit filed last year](#) that after the property transferred, Razuki pushed Harcourt out by changing the name on the permit to Balboa Avenue Cooperative and putting Malan in charge.

Both Razuki and Malan are defendants in that ongoing case.