# Ep #59: What Really Matters When Negotiating a Restaurant Deal


## Full Episode Transcript

### With Your Hosts

## Patrick Totah and Andy Mirabell

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Welcome to *Restaurant Deal Making EXPOSED!*, the only show that equips you with everything you need to know about restaurant transactions. In this show, we tell you all about how to make the sale or purchase of your restaurant not just possible, but successful. Now, here are your hosts, ex-restaurateurs, and seasoned brokers, Patrick Totah and Andy Mirabell.

Andy Mirabell: Hello, everyone. Welcome to another episode of *Restaurant Deal Making EXPOSED!* I am Andy. I'm here with Patrick, and today we are having an episode that we are calling *What Really Matters When Negotiating a Restaurant Deal*. One of the biggest mistakes buyers make is spending hours, days, or weeks negotiating the wrong things while overlooking the issues that can determine whether the business succeeds or fails.

In today's episode, we're talking about what actually matters when negotiating a restaurant acquisition. Where you should stand your ground and where you might be wasting valuable time and goodwill with the seller. Whether you're buying your first restaurant or your fifth, knowing the difference can save you thousands of dollars and a lot of headaches.

Gosh, Patrick, I think we're there on a day-to-day basis. Over negotiation, focusing on things that are pretty minute in a transaction. We don't want to minimize anyone's desire to have everything detailed or negotiated. However, small things are literally small things in these big transactions, right? So, I want to ask you, have you experienced buyers who want to negotiate every minute detail? And how does that work out, affecting a transaction? Can it affect the relationship between buyer and seller and the agents? What do you think?

Patrick Totah: There's two different ways to answer that. Like, obviously you want to be fully transparent going into a deal with the seller and everybody that, you know, what's important to you and not bring up negotiable items once you're in contract and then all of a sudden trying to change terms, right? That's very important.

On the other hand, yes, there are buyers who will negotiate till they're blue in the face, and it becomes more about the negotiation than it does about securing the deal. And those buyers, I find, if you do not set expectations up front, they'll continue to negotiate all the way to the last day of the transaction. And they don't take no for an answer, and they just keep going because they just don't understand. They don't know that they have a good deal in front of them. They just think that they're supposed to continue to negotiate.

Andy: I think that personality is hard to change. That might be embedded in some people. So when you remove contingencies, can certain terms still change or are things still fluid? Yeah, because oftentimes there is certain levels of discovery and training or maybe equipment breaks before the close of escrow. But if you're really trying to rework the deal after you remove contingencies, it can be a deal killer.

Patrick: Yeah, I mean, I think the important thing is negotiating in good faith, right? You're not just renegotiating the terms because you feel like renegotiating the terms versus, hey, you've done your due diligence, you've found certain things that are, quote unquote, potential deal killers or things that, you know, change the deal materially for you. And because of that, it's either I need to get new terms, or maybe this isn't the right deal. So it's really about negotiating in good faith, right? You always want, as you're going through a transaction, to be acting in good faith.

Andy: Well said. Well said. I have a very ambitious young buyer that I'm working with now, and it has been weeks and weeks and weeks and pages and pages of outlines on what we need to discuss and what he wants in his deal, and it doesn't work. The seller actually just went dark on us after a month of this, and I don't blame them. And I tried to warn ahead of time, and it didn't work.

Patrick: It's overwhelming.

Andy: It is overwhelming.

Patrick: You obviously want someone to feel like they're being taken serious with their negotiation, but you don't want to scare off the other side as well.

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Andy: Yeah. A complex buyer or a complex deal can really, really scare away a seller. A seller wants a little and deserves some simplicity in the transaction, right?

Patrick: Yeah, it's very emotional, right? I mean, and when you start adding all this extra stuff, it just becomes even more emotional.

Andy: Yeah. All right.

Patrick: So Andy, tell me, what are some of the things that a buyer often negotiates that there's a fine line between ensuring that they're protected or that they're covering all of the things that are important versus going over the top?

Andy: Yeah, the main things that people can negotiate, you know, I think we're going to dive into that a little bit further, but the main things really most often revolve around the lease and lease security, relevant due diligence items or the larger due diligence items, training, if they're taking over a going concern, the assets. Are the assets being kept in good condition and are going to pass on in good condition? And of course, purchase price. That's obviously a big one. So, you know, those are the big ones.

I'm going to go backwards a little bit here and back up to what can buyers often overnegotiate? Because that's kind of what one of the main points of this episode today is what can they overnegotiate? I think buyers can overnegotiate on relatively small amounts of money as pertaining to purchase price. Are you really going to lose a deal you're really passionate about that you really want? You want this business, you want this location, but you're going to let it go over a thousand dollars? I've seen it happen. That seems stubborn.

Patrick: It becomes more, again, like about winning versus just coming to terms with the other side.

Andy: Very good. Okay. We have equipment lists in our files, right? A lot of, there has been disagreements or wanting verbose language about the minor stuff, the little teeny things, the utensils, the small wares and things like that. I think when you're getting into a business, especially a restaurant, you really need to focus on the expensive, the major pieces of equipment and maybe let go of the forks and knives as being spelled out directly because there may be a few less at the end of escrow.

Patrick: There's, you know, there's the equipment list can be very tedious. I sometimes advise my sellers to just put all utensils, all glassware.

Andy: Miscellaneous catering, yeah.

Patrick: Miscellaneous catering, and most of the time buyers are good with that. But it's just, you know, I can understand you want to make sure at the end that all the things are going to be there that they need to operate the business.

Andy: Exactly. One thing that can become a little bit sticky because it is something that is not finalized until the close of escrow, which means after we've removed contingencies, of course, is inventory adjustments. That can get dicey between buyer and seller. If we've agreed on a general range of inventory that the buyer will agree to buy, we always have a they won't buy more than and we they won't accept less than, you know, but if we're get to the end and we count inventory, buyer and seller count inventory, and there's a few bottles of this or that and they're like, I don't want it. I'm not going to use it. I'm like, you know, again, we're talking about a very small, small item here, a small dollar amount, and a small detail that you could hold up the close of escrow.

Patrick: I have seen inventory turn into an absolute S-show where either the buyer or the seller is nickel and diming along the way or both sides start to nickel and dime. It's really something that I've started to coach ahead of time with both the buyer and seller in having them both act reasonable about the whole thing. Buyers have this idea that they shouldn't pay for inventory, and in some cases, they're going to end up having to buy that inventory anyways. It's not like they're paying more for it by buying it from the seller. And why not have it ready to go once you take over the business, right?

Andy: They will profit from that. That is, in turn, going to be profit in their pocket.

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Patrick: It doesn't make any sense to me. And, you know, I've had some very reasonable inventories where both sides are, you know, hey, this is the amount. Hey, that looks good. I'll double-check here and there. And this is like a very important part of a transaction. The problem is it's the very last thing you do basically, right?

Andy: We're not going to have you buy a rotten box of tomatoes, okay? We're not, I'm not going to make you buy anything. It's up to you. But yeah, you're not going to buy a rotten box of tomatoes.

Why do you avoid saying… and when we say inventory, folks, we're talking about working inventory. We're not talking about ovens and the FF&E, the furniture, fixtures, and equipment. We're talking about working inventory, food, beverage, paper products, things like this. Things that are disposable essentially or sellable. Why do you not include working inventory in purchase price, Patrick? Why do we try to spell it? Why do you not say working inventory included in purchase price on many transactions?

Patrick: Well, if let's say that it's an asset sale and someone's going to come in there and do a completely different concept and that food and beverage just doesn't make sense for them.

Andy: That makes sense.

Patrick: To me, then, you know, hey, inventory should not be included. Seller should get rid of it, sell it off, whatever they need to do to, you know, not be left holding the bag at the end.

On going concerns, when you're buying a restaurant and you're going to continue the same concept the very next day, then it should be, it's not included, but the buyer should buy it from the seller. And the reason why we do it that way is if I said, "Hey, seller, please include the inventory in the purchase price." If I'm the seller, what are you going to do? You're going to burn it down and leave you with like minimal amount of product. Why should I, you know, that's like twenty or thirty thousand dollars that's in the cloud that you've been like never paid on, and now you're asking the seller to take a twenty or thirty thousand dollar reduction? Like, why would they do that?

Andy: It does not set the buyer up for success either. So it's a lose-lose. It's a lose-lose.

Patrick: It's a lose-lose. Exactly. So, but, you know, I have buyers who are dead set on the lose-lose. I don't know why.

Andy: Yeah. So here's another side of it. To the buyers, we have a little bit of advice to avoid some of the disputes that or disagreements that could come during a transaction. I think it's really good, and this can go both ways, but the buyer, think like a seller. If this was your business, you need to look through the eyes of the seller so you can understand why they may be responding to something that you're asking for in the way that they do. So what would you do if you were in their situation, sort of, is the advice there.

Patrick: Only if.

Andy: Yeah, only if. And I think what business etiquette or behaviors or asks would raise red flags for you if you were in the seller's shoes? So would you accept the thing that you're asking for? That's that little kind of like, let's slow down. Let's say, and that's a good question sometimes for us to put in front of a buyer. Would you accept that term if you were in their position? So, anyways, I think that's a nice little rule of thumb and it kind of slows people down from jumping the gun on some of their asks.

From the seller perspective, I think one of the key things that sellers want is certainty. They don't want to enter into a transaction and feel uneasy as if the transaction is always about to fall apart, right? These transactions that we do as restaurant brokers, what do you say, Patrick? A deal dies 10 times before it before it, you know, moves on. Certainty, a lot of that falls on the broker's shoulders too. Things need to be worded very clearly so there's no gray area and or attorneys if you have attorneys wording your A P A or your terms. But sellers want certainty. And I think that really diffuses a lot of sellers, and they will be more amicable or more agreeable to an ask of a buyer as long as they it's not coming at them all the time, right? It's not being asked every other second.

Patrick: They're already feeling like it could fall apart at any second, right? So like anything that makes it feel less certain is just adding to the fire of, you know, this very emotional, uncertain thing for them, right? Until it's done. I mean, I have sellers who even after contingencies are removed, you know, have a feeling that the deal could not happen. And you know, I have to take myself back when I was a seller and not a business broker, and I had those feelings too. Like, you don't want to count your eggs until they're, you know, until they're hatched.

Andy: Yeah, no, absolutely. Would you call this phrase or this sentence true or false, Patrick? A slightly lower offer with a lot high likelihood of closing is often better and more attractive to a seller than a higher offer loaded with uncertainty or too many terms.

Patrick: Yeah, I mean if a deal is not going to happen and then it doesn't really matter what the purchase price is, right?

Andy: Okay.

Patrick: What I think is sometimes as a seller, the things that matter are underrated. It's not just about the highest price. It's about a buyer who's going to perform and also be approved by the landlord and be solid throughout the entire transaction versus someone who's going to pay a higher price and is a 50 with the landlord and is going to act like a wise guy the entire time.

Andy: Exactly. It's a good rule of thumb. I mean, it's something to consider, folks. Likewise, this is very similar. At from a buyer perspective, make your offer easy to say yes to. Less is more at times. Overly verbose purchase agreements, gotcha contingencies are going to deter sellers from wanting to work with you. This goes back to my very young, ambitious buyer. There was so many gotchas when it came to training. If this didn't happen, if this milestone didn't happen, if his team couldn't produce it as well as the seller's team right away. And I said, this language doesn't work. It just doesn't work. It wouldn't work for anybody. So.

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Patrick: Yeah, let me flip the script a little bit here. I've had sellers who say, okay, I'll accept this offer, but the initial deposit has to be a hard deposit.

Andy: Got it.

Patrick: And I'm like, why? I'm like, let me ask you a question. Would you buy a business where the deposit is hard from the get-go, and they still have to do their due diligence and also be approved for the lease? Like if they don't get approved for the lease, that's out of their hands. That's the landlord, right? Like, why would they have to lose the deposit? And I've had sellers that are like, it should be this way.

Andy: You just used the rule of thumb to oftentimes ask a client, would you accept that term? And this is why you probably wouldn't. That's not something that's advisable and due diligence is the most important part everybody's got to get through that. Now, of course, after that, let's make that deposit hard. You know?

So, anyways, let's go backwards a little bit, Patrick. Do you want to kind of re-touch on some of some things that buyers should prioritize and leave out the other stuff, we'll call it? Just so we know, so our listeners can kind of hear a little bit more detail about these sections and what is important within them.

Patrick: Yeah, the five things that I believe buyers should prioritize in a transaction. Number one, lease security. You know, how long is that lease? Are there renewal options? What is the assignment language? Are there any red flags in the lease? What are the rent increases? Where is that rent going to be towards the end of that lease? You know, how much are you going to be paying?

The other number two would be due diligence, making sure you, you know, not just the financial review, but also like equipment, refrigerators, vac, plumbing, electricity, things that could eventually, you know, after you close escrow, six months to a year, be big ticket items for you like a condenser, making sure you've covered all that as well.

Number three, training and transition. What is the seller training period? What is the staff transition? How are the recipes being kept? Are they in a digital format? Is it a book, book binder type situation? Most sellers are, you know, hey, I add a little this and I add a little that. That's not transferable.

Assets and F and E. What is the condition of the hood system? You know, has it been serviced regularly? What about the walk-in? Is there preventative maintenance schedule? I've talked about the plumbing and electrical already.

And then lastly, working capital. You know, what is the inventory? What is the opening cash needs? What is your marketing? I think buyers often underestimate how much money they're going to need after the close of escrow, right? Like they say, hey, the business I'm buying is three hundred thousand dollars, and here I have three hundred thousand dollars. I was like, okay, what about working capital? You're going to have to turn around and buy food immediately. You're going to have to turn around and run a payroll within two weeks. You're going to have your security deposit and your first month's rent.

Andy: You better have six months of this in your account.

Patrick: Yeah, there's inevitably going to be things that you have to go run to the store and get because you just opened up, right? You know, don't bleed yourself dry just to get open because I guarantee you'll be chasing your tail the entire time.

Andy: Yeah, well said. Well said. Yeah, you're totally right on that. Set yourself up for success and that often comes with a pretty big price tag after close of escrow. So, yeah, this is a good concise list. I just want to say, the best negotiators aren't the ones who argue over everything. They're the ones who know what truly creates value. You got to protect your lease, protect your due diligence list, and protect your, you know, capital after closing. You don't lose a great opportunity over issues that won't matter six months after you take ownership. So sometimes, don't sweat the small stuff.

Patrick: I have a surprise bonus question for you.

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Andy: Oh gosh.

Patrick: Let's put you on the spot because you always put all of our guests on the spot. You just recently went to Outside Lands.

Andy: Oh gosh, yes, I did.

Patrick: What was the best thing you ate there, and what was the best performance that you saw?

Andy: Wow. Okay, good. Let's see. So, the best thing I ate, oh my gosh, I ate a salted ube croissant.

Patrick: That sounds delicious.

Andy: It was literally really, really the right low level of sweetness for me, super salty and sweet. And then likewise, Tanya then handed me a butter-salted croissant, and I mean, she held it upside down, and the butter just started dripping out of the middle. It was the most decadent croissant I've ever had. It was a pastry cart that was new this year, and it was just fantastic.

My daughter and her best friend absolutely went crazy for Smish Smash, which is the Bay Area's top smash burger. Good friends of ours and a client too. So, yeah, they were all nuts about that.

The best thing I saw, the best thing I saw was letting my 13-year-old be front row at Empire of the Sun because guess what? I let her do it alone. And so I went off and saw a band I liked. But she had a great time. Anyways, it was it was an amazing festival. Rufus Du Sol absolutely killed it as the closeout band. And then I did channel the inner teen in me, and I almost called him Djo, but it's Joe, and the guy from *Stranger Things*, great band, great live band. So I was really impressed.

Patrick: Cool.

Andy: Yeah.

# Ep #59: What Really Matters When Negotiating a Restaurant Deal

Patrick: Sweet.

Andy: Thank you. Thanks for putting me on the spot, Patrick. It was a good weekend. That's why we're recording on Thursday and not Tuesday, because my brain wasn't working so good. Yeah.

Anyways, well, thank you all for listening. Don't sweat the small stuff, buyers. Let's get a transaction done so we can make things easier on all parties moving forward. Join us next time. Thank you so much.

Thank you all for listening to this week's episode of *Restaurant Deal Making EXPOSED!* If you're considering selling your business and would like a free consultation, reach out to patrickAndAndy@therestaurantsalesbroker.com or visit TheRestaurantSalesBroker.com to learn more.