

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
RELEASE NO. 1717 / April 24, 1998

ADMINISTRATIVE PROCEEDING File No. 3-9584

In the Matter of RESERVOIR CAPITAL MANAGEMENT, INC., AND ROANN COSTIN,
IMPOSING REMEDIAL SANCTIONS, Respondents

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 203(e) 203(f) AND 203(k)
OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS AND AND CEASE-AND-
DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Respondents Reservoir Capital Management, Inc. ("Reservoir") and RoAnn Costin ("Costin").

II.

In anticipation of the institution of these administrative proceedings, Reservoir and Costin have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings contained herein, except those findings pertaining to the jurisdiction of the Commission over them and the subject matter of these proceedings, Reservoir and Costin consent to the entry of the findings and the imposition of the remedial sanctions and cease-and-desist order set forth herein.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act be, and hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings, and the Offers submitted by Reservoir and Costin, the Commission finds that:

A. RESPONDENTS

1. Reservoir (File No. 801-41833), a Massachusetts corporation located in Boston, Massachusetts, was registered with the Commission as an investment adviser from June 1992 until July 1997 when it deregistered pursuant to Section 203A of the Advisers Act. Reservoir offered investment advice to discretionary clients on equity and fixed-income securities. At all relevant times, Reservoir had approximately five employees.

2. Costin, 45, has been the sole officer, director and shareholder of Reservoir since 1992. She also functioned as Reservoir's compliance officer. Costin resides in Cambridge, Massachusetts.

B. FACTS

From at least in or about March 1994 through in or about May 1996, Reservoir distributed advertising to prospective investment advisory clients that overstated its investment performance

by more than one hundred percent and inflated the amount of assets it managed by up to 2500%. Specifically, Reservoir claimed that its total return from March 1994 to December 1995, was approximately 55%, when its actual total return was approximately 26%. Reservoir also reported assets under management of various amounts ranging from \$175 million to \$250 million when, in fact, Reservoir never had more than \$10 million in assets under management. Reservoir made corresponding misrepresentations in its submissions to investment management databases, "Requests for Proposals" ("RFPs") it submitted to prospective public institutional clients and, with respect to assets under its management, its filings with the Commission. [1]

Reservoir also provided three prospective clients a client list that materially misrepresented the nature of its business. The client list, which Reservoir described as "representative," consisted of the names of eight institutional investors, thereby creating the impression that a substantial segment of Reservoir's advisory business involved advising institutional clients. In fact, no more than fifteen percent of Reservoir's assets under management were assets of institutional clients. In addition, at least two of the eight institutional investors included on the client list were not clients of Reservoir.

Finally, from June 1993 to June 1996, Reservoir failed to deliver, or offer in writing to deliver, to its clients a copy of Part II of its Form ADV filings with the Commission or equivalent information. Since its inception in September 1992, Reservoir also failed to make and maintain general and auxiliary ledgers reflecting asset, liability, reserve, capital, income and expense accounts, reconciliations of its bank statements to its checkbooks, or trial balances relating to its business.

Costin had primary and ultimate responsibility for ensuring the accuracy of the content of Reservoir's advertising brochure, including the client list, as well as Reservoir's submissions to investment management databases and RFPs. Costin also was responsible for the content of Reservoir's Commission filings, which she signed, and for ensuring Reservoir's compliance with the books and records requirements of the Advisers Act.

C. VIOLATIONS

By virtue of the conduct described above:

1. Reservoir willfully violated, and Costin willfully aided and abetted and caused Reservoir's violations of, the following:

a. Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder by, among other things, through the mails and means or instrumentalities of interstate commerce, directly or indirectly, employing a device, scheme or artifice to defraud clients and prospective clients, engaging in transactions, practices and a course of business which operated as a fraud or deceit on clients and prospective clients and engaging in acts, practices and courses of business which were fraudulent, deceptive and manipulative, and publishing, circulating and distributing advertisements which contained untrue statements of material fact and were otherwise false and misleading;

b. Section 204 of the Advisers Act by, among other things, using the mails or means or instrumentalities of interstate commerce in connection with its business as an investment adviser and failing to make and keep for prescribed periods records, furnish copies thereof and make and disseminate such reports as the Commission has prescribed, and:

(1) Rules 204-2(a)(2), 204-2(a)(4), 204-2(a)(6), 204-2(a)(12) by failing to make and keep general and auxiliary ledgers reflecting asset, liability, reserve, capital, income and expense accounts and check books, bank statements, cancelled checks and cash reconciliations, trial balances, financial statements and internal audit papers relating to its business, and records of every transaction in a security in which Reservoir or any

advisory representative of Reservoir had, or by reason of such transaction acquired, any direct or indirect beneficial ownership; and

(2) Rule 204-3 by failing to deliver, or offering in writing to deliver, to Reservoir's investment advisory clients on an annual basis either a copy of Part II of Reservoir's Form ADV or at least the information required by Part II of Form ADV; and

2. Reservoir and Costin willfully violated Section 207 of the Advisers Act by, among other things, willfully making untrue statements of material fact in registration statements and reports filed with the Commission under Section 204 and willfully omitting to state in such applications and reports material facts required to be stated therein.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers submitted by Reservoir and Costin and to impose the sanction specified therein.

Accordingly, IT IS HEREBY ORDERED that:

1. Pursuant to Section 203(k) of the Advisers Act, Reservoir and Costin shall cease and desist from committing or causing any violation or future violation of Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204- 2(a)(2), (4), (6) and (12), 204-3 and 206(4)-1(a)(5) thereunder;

2. Pursuant to Sections 203(e) and 203(f) of the Advisers Act, Reservoir and Costin be, and hereby are, censured;

3. Within ten (10) days of the entry of this Order, Reservoir shall pay a civil money penalty in the amount of \$50,000, and Costin shall pay a civil money penalty in the amount of \$25,000, to the United States Treasury. Such payments shall be: (A) made by United States postal money Order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of the Comptroller, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (D) submitted under cover letter which identifies Reservoir and Costin as the Respondents in these proceedings, the file number of these proceedings and the Commission's case number, a copy of which cover letter and money order or check shall be sent to Grant David Ward, Assistant District Administrator, Securities and Exchange Commission, Boston District Office, 73 Tremont Street, Suite 600, Boston, Massachusetts, 02108; and

IT IS FURTHER ORDERED that Reservoir shall comply with the following undertakings contained in its offer of settlement:

1. Reservoir shall retain, within thirty (30) days of the entry of this Order, the services of an independent consultant who is not unacceptable to the staff of the Commission. Such consultant shall be retained by Reservoir and his or her compensation and expenses shall be borne exclusively by Reservoir. Reservoir undertakes to arrange for the consultant to review: (a) Reservoir's methods of calculating performance and assets under management for disclosure to investment advisory clients and prospective investment advisory clients; and (b) Reservoir's maintenance of books and records. The consultant shall conduct such review to determine whether Reservoir has complied with this Order and shall make recommendations concerning Reservoir's policies and procedures regarding advertising and the maintenance of books and records.

2. Reservoir shall provide the staff of the Commission, no later than ten (10) days from the date of engagement, with a copy of an engagement letter detailing the scope of the consultant's responsibilities pursuant to sub- paragraph 1 above.

3. Reservoir shall arrange for the consultant to make his or her conclusions and recommendations within ninety (90) days from the date of engagement in the form of a report which shall set forth in detail the nature and scope of the review conducted, as well as the conclusions and recommendations of the consultant. Reservoir may apply to the staff of the Commission for an extension for whatever time period it deems appropriate, but in no event shall the review be completed and the report submitted to Reservoir more than one hundred twenty (120) days from the date of the Order. Reservoir undertakes to cooperate fully with the consultant and undertakes to provide such person with access to its files, books, records, and personnel as reasonably requested for such person's review.

4. Reservoir shall take all necessary and appropriate steps to adopt and to implement all recommendations of the consultant, provided, however, as to any of the consultant's recommendations that Reservoir determines are unduly burdensome or impractical, Reservoir may suggest an alternative procedure designed to obtain the same objective, submitted in writing to the consultant and to the staff of the Commission. The consultant shall reasonably evaluate Reservoir's alternative procedure and approve the alternative if it is not unreasonable. Reservoir will abide by the consultant's determination with regard thereto and adopt those recommendations deemed appropriate by the consultant.

5. Reservoir shall revise its compliance manual in accordance with recommendations made by the consultant. Reservoir undertakes to make available copies of the compliance manual to its employees and familiarize them to the policies and procedures set forth in this compliance manual. In addition, Reservoir undertakes to make available at Reservoir's offices for inspection by the Commission's staff, a copy of the Reservoir compliance manual.

6. Reservoir shall arrange for the consultant to return to Reservoir no later than ninety (90) days after the date the special review report was issued to ensure that all recommendations have been implemented. Reservoir undertakes to arrange for the consultant to provide to the staff of the Commission's Boston District Office, no later than thirty (30) days from the date of such follow-up review, a written certification that the follow-up review has been completed and the recommendations have been implemented.

7. For the period of engagement and for a period of two years from completion of the engagement, the consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Reservoir or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity as such. Any firm with which the consultant is affiliated, or which he/she is a member, and any person engaged to assist the consultant in the performance of his duties under this Order shall not, without prior written consent of the Commission's Boston District Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Reservoir or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity as such for the period of engagement and for a period of two years after the engagement.

8. Reservoir shall mail a copy of this Order, together with a cover letter, in a form acceptable to the staff of the Commission, to each of its existing clients by certified mail, return receipt requested, within thirty (30) days from the date of this Order. From the effective date of this Order until the expiration of twelve (12) months, Reservoir shall provide a copy of this Order to all prospective investment advisory clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract (or no later than the time of entering into such contract, if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract). Also, within thirty (30) days from the date of this Order, Reservoir shall execute and deliver to the staff of the Commission's Boston District Office an affidavit that it has provided this Order to its existing clients in accordance with this Order's terms. Finally, within thirteen (13) months from the date of this Order, Reservoir shall execute and deliver to the staff of the Commission's Boston District Office an affidavit that it has provided this Order to its prospective clients in accordance with this Order's terms.

By the Commission.

Jonathan G. Katz
Secretary

FOOTNOTE

[1]: Reservoir's misstatements of assets under its management resulted from Reservoir including in its calculation of assets under management assets of certain institutional investors whose analyst often attended Reservoir's weekly investment committee meeting. Those assets, however, were not managed by Reservoir. Reservoir misstated its performance mostly by also inappropriately including those assets in its performance calculations. To a much lesser extent, Reservoir's misstated performance is attributable to Reservoir's failures to disclose that its reported performance did not account for advisory or other fees paid by its clients.