

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

JOHN DIPRE,	:	
	:	
Plaintiff-Appellant,	:	No. 112321
	:	
v.	:	
	:	
OHIO DEPARTMENT OF	:	
INSURANCE,	:	
	:	
Defendant-Appellee.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: August 31, 2023**

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Administrative Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CV-22-958815

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***Appearances:***

The Goldberg Law Firm and Michael J. Goldberg, *for appellant.*

Dave Yost, Ohio Attorney General, and Christie Limbert, Senior Assistant Attorney General, *for appellee.*

MARY EILEEN KILBANE, J.:

{¶ 1} Plaintiff-appellant John Dipre (“Dipre”) appeals from the trial court’s judgment affirming the order of the defendant-appellee Ohio Department of

Insurance (“the Department”) and thereby dismissing Dipre’s administrative appeal. For the reasons that follow, we affirm.

### **Factual and Procedural History**

{¶ 2} On November 18, 2021, the Department sent a certified letter to Dipre, who at the time was licensed as a resident insurance agent, notifying him that the Department had conducted an investigation. Pursuant to the investigation, the Department alleged that Dipre violated Ohio insurance law. The Department enclosed a notice of opportunity for hearing, which listed ten counts alleging that Dipre had impersonated an insured in an effort to obtain information on insurance contracts. The notice stated that Dipre may request a hearing pursuant to R.C. Chapter 119 and that if Dipre wished to request a hearing, “the Department must receive any request for a hearing within thirty (30) days of the mailing of this Notice.” Finally, the notice informed Dipre that “[i]f no hearing is requested, the matter will proceed to the Superintendent for decision where she may impose any sanction allowed by law.”

{¶ 3} The record reflects that service of the certified letter was perfected on November 20, 2021.

{¶ 4} On November 22, 2021, Dipre and his partner Pamela Dipre (“Pamela”)<sup>1</sup> responded to Darcy Moulin (“Moulin”), the Department

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<sup>1</sup> In Dipre’s response to the November 18 letter from the Department, he attached a certified letter and notice of opportunity of hearing addressed to Pamela and setting forth two counts of violations of Ohio insurance law, also related to impersonating an insured in an effort to obtain information on insurance contracts. Pamela is not a party to this case.

Enforcement/Licensing Attorney who had sent the November 18 letter. Dipre stated in part:

We have spent the last year and half addressing questions regarding these issues. We have answered to the best of our ability and honestly. We acknowledge our fault in calling on behalf of our client even though we had their permission and their complete knowledge. We have since been told and realize that even with permission we are unable to represent any client in this way. We have changed our practices to 3-way calling for all information calls with clients now and in the future.

We are asking for pardon on these counts. We are 61 and 60 years old respectively. Our entire career has been in the insurance industry. Many families working for our company are reliant on the financial livelihood our company provides.

We acknowledge our mistakes and take responsibility however we implore you not to terminate our license at this point of our career. We would hope that our record of longevity in this industry with minimal incidents will allow us to continue servicing our families.

We do not request a hearing realizing that we have spoken multiple times and answered all questions honestly. We trust the Ohio Department of Insurance will look at our past and be fair to us.

{¶ 5} On January 14, 2022, the Department sent Dipre a certified letter containing an original copy of the executed Order of Revocation of his resident insurance agent license. The Department Superintendent stated that, pursuant to the authority granted in R.C. 3905.14(D), Dipre's license was revoked effective immediately. The order of revocation also notified Dipre of his appellate rights, stating that the order may be appealed by filing a notice of appeal with the Department and "setting forth the order appealed from and stating that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law." The notice further stated that such

notices of appeal shall be filed within 15 days after the mailing of the Department's order of revocation.

**{¶ 6}** On January 27, 2022, Dipre filed a notice of appeal in the Cuyahoga County Court of Common Pleas.

**{¶ 7}** On July 8, 2022, Dipre filed a brief in support of his motion to remand to the Department for an opportunity to be heard pursuant to R.C. 119.07. Dipre argued that the order of revocation was not supported by reliable, probative, and substantial evidence and the sanction imposed was disproportionate to the alleged violations. Further, Dipre argued that R.C. 119.07 was unconstitutional as applied to him.

**{¶ 8}** On August 11, 2022, the Department filed a brief in response, arguing that the common pleas court should affirm the Department's revocation because it is supported by reliable, probative, and substantial evidence and is in accordance with law, pursuant to R.C. 119.21(M).

**{¶ 9}** On December 13, 2022, the trial court affirmed the Department's January 14, 2022 order of revocation. In an attached memorandum of law, the trial court stated that having reviewed the parties' briefs, it found that the order of revocation was supported by reliable, probative, and substantial evidence and is in accordance with law. The trial court further found that Dipre explicitly did not request a hearing. Finally, the trial court found that the order of revocation was supported by audio files of Dipre's conduct, interviews with Dipre's clients wherein they stated that Dipre did not have authorization to impersonate them over the

phone, and Dipre's written and oral admissions to making the calls. Specifically, the trial court found that Dipre's "conduct was dishonest and completely unacceptable for anyone holding a license issued by the State of Ohio."

**{¶ 10}** Dipre filed a timely notice of appeal and raises a single assignment of error for our review:

The trial court committed reversible error, and denied administrative appellant due process of law, when it dismissed the administrative appeal, without first conducting a de novo evidentiary hearing.

### **Legal Analysis**

**{¶ 11}** An appeal from an administrative agency in Ohio is governed by R.C. 119.12. *Unik v. Ohio Dept. of Ins.*, 2016-Ohio-921, 61 N.E.3d 531, ¶ 8 (8th Dist.), citing *Our Place, Inc. v. Ohio Liquor Control Com.*, 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992). R.C. 119.12(A)(1) states that

[e]xcept as provided in division (A)(2) or (3) of this section, any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a license, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.

**{¶ 12}** When reviewing an order entered by an administrative agency, the court of common pleas applies the limited standard of review set forth in R.C. 119.12 and determines whether the order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Unik v. Ohio Dept. of Ins.* at ¶ 10, citing *Young v. Cuyahoga Work & Training Agency*, 8th Dist. Cuyahoga No.

79123, 2001 Ohio App. LEXIS 3222, 5 (July 19, 2001), citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110, 407 N.E.2d 1265 (1980). When reviewing the common pleas court's determination, an appellate court determines only whether the court abused its discretion in finding whether the agency's order is supported by such evidence. *Id.*, citing *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707, 590 N.E.2d 1240 (1992). The term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, ¶ 35.

{¶ 13} In his sole assignment of error, Dipre argues that R.C. 119.07 is unconstitutional as applied to himself "under the unique set of facts presented here." Dipre contends that the trial court's dismissal of his administrative appeal without an evidentiary hearing denied him due process of law. Specifically, Dipre argues that he was prepared to present evidence to the trial court that he was never provided notification that his valuable property right — specifically, his Ohio resident insurance license — was in jeopardy. Dipre does not make any substantive argument as to how, despite receiving the notice and opportunity of hearing to which he responded in detail, he was not provided notification that his license was at risk of suspension or revocation.

**{¶ 14}** Having reviewed the record, we cannot conclude that the trial court's order affirming the Department's order of revocation was unreasonable, arbitrary, or unconscionable. The record supports the trial court's determination that the order of revocation was supported by reliable, probative, and substantial evidence. Specifically, the record contains significant evidence of Dipre's impersonation of his clients, as well as Dipre's own written admissions to this conduct. Because Dipre explicitly declined to exercise his right to a hearing, the Department relied on the evidence that it had gathered, as well as Dipre's own statements. Because Dipre failed to request a hearing after receiving notice from the Department, he has waived his right to challenge the findings by the Department. *Unik v. Ohio Dept. of Ins.* at ¶ 14, citing *Mays v. Ohio State Dental Bd.*, 8th Dist. Cuyahoga No. 68864, 1996 Ohio App. LEXIS 1972, 12 (May 16, 1996), citing *Noernberg v. Brook Park*, 63 Ohio St.2d 26, 29, 406 N.E.2d 1095 (1980).

**{¶ 15}** Further, Dipre declines to provide any argument as to how exactly R.C. 119.07 is unconstitutional as applied to him. Additionally, "facial constitutional arguments are not normally within an administrative agency's jurisdiction[,]" and, therefore, facial constitutional challenges may be raised for the first time in an administrative appeal. *Id.* at ¶ 16, citing *Roosevelt Properties Co. v. Kinney*, 12 Ohio St.3d 7, 8, 465 N.E.2d 421 (1984), and *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, 520 N.E.2d 188 (1988), paragraph two of the syllabus. A challenge to the constitutional application of legislation to particular facts, however, must be raised at the first available opportunity during the proceedings before the administrative

agency. *Id.*, citing *Bd. of Edn. of the S.W. City Schools v. Kinney*, 24 Ohio St.3d 184, 494 N.E.2d 1109 (1986), syllabus. The failure to do so constitutes waiver of that issue. *Id.* at ¶ 17, quoting *Bd. of Edn. of the S.W. City Schools v. Kinney* at syllabus.

{¶ 16} Therefore, Dipre was required to raise his constitutional challenge to the application of R.C. 119.07 to his case before the Department. Having failed to do so, Dipre has waived his right to challenge the constitutionality of R.C. 119.07. Therefore, we decline to address Dipre’s assertion that R.C. 119.07 is unconstitutional as applied to Dipre.

{¶ 17} Dipre’s sole assignment of error is overruled.

{¶ 18} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, JUDGE

ANITA LASTER MAYS, A.J., and  
EMANUELLA D. GROVES, J., CONCUR