

Yvonne McCain et al., Respondents-Appellants;
Donna Keyes et al., Intervenors-Respondents-
Appellants; Carolyn Lee et al., Proposed Intervenors-
Appellants, and Linda James et al., Intervenors-
Appellants,

v.

Edward I. Koch, as Mayor of the City of New York,
et al., Appellants-Respondents, et al., Defendant.
Supreme Court, Appellate Division, First
Department, New York

January 12, 1988

CITE TITLE AS: McCain v Koch

OPINION OF THE COURT

Concur--Kupferman, J. P., Sullivan, Ross and
Rosenberger, JJ.

Upon remittitur from the Court of Appeals, order,
Supreme Court, New York County (Edward J.
Greenfield, J.), entered June 27, 1984, which granted
plaintiffs' motion for preliminary injunction,
affirmed, without costs.

In our prior opinion in this case ([117 AD2d 198](#)), we
found that plaintiffs had established their entitlement
to an injunction pendente lite requiring defendants to
provide them with emergency shelter. However,
based on our reading of prior decisions by the Court
of Appeals, we reluctantly concluded that the
adequacy of the shelter provided was a matter
committed to the Legislature's discretion and, in the
absence of a legislative directive, the courts were
without power to set even minimum standards of
decency and habitability for the emergency shelter or
to compel officials to meet the courtordered
standards. On appeal, the Court of Appeals ruled that
the Supreme Court "had the power to require
defendants, once they undertook to provide housing,
to make that shelter minimally habitable" ([McCain v.
Koch, 70 NY2d 109, 118 \[1987\]](#)). The Court of
Appeals reversed and remanded the matter to this
court for consideration of whether Supreme Court
abused its discretion or whether this court, in the
exercise of its discretion, should make a different
disposition of the case.

Defendants now argue that Supreme Court abused its
discretion by adopting minimum shelter standards
after defendant Commissioner of the State
Department of Social Services (DSS) had
promulgated regulations governing DSS referrals to
emergency housing facilities. They urge that we
vacate the preliminary injunction which incorporated
the court-ordered minimum emergency housing
standards. We decline to do so. While*474 it is true,
as the Court of Appeals noted, that the current DSS
regulations "subsume the more general and less
rigorous standards in the court order" (70 NY2d,
supra., at 120), they are binding only on DSS
officials. These regulations have no force as to
defendant Commissioner of the New York City
Department of Housing Preservation and
Development (HPD). HPD is responsible for the
relocation of families made homeless by fires or
government-issued vacate orders. It also refers
families to the shelters and hotels, often to the same
facilities as are used by DSS. Upon termination of
HPD benefits, families without permanent housing
are referred to DSS and, plaintiffs allege,
approximately 30% of HPD's case load is eventually
transferred to DSS. The court-ordered standards
incorporated in the preliminary injunction establish
the only minimum emergency shelter standards
which are binding on HPD. We therefore reinstate the
preliminary injunction and remand for further
proceedings on compliance and enforcement.

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N.Y.A.D.,1988.
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136 A.D.2d 473

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