

southerly boundary, the courses, distances, monuments, and markers which he used were different than those in pertinent deeds and plans. Furthermore, while he stated that an acreage deficiency would exist if his boundary lines were correct, he conceded that no such problem would arise if the southerly boundary shown on the two subdivision plans was accurate.

[REDACTED] Contrary to the plaintiffs' argument, we do not find the surveyor's testimony conclusive. As noted above, the surveyor's conclusions were open to question, and he himself expressed some uncertainty about them. The trial court, moreover, was not bound to accept the testimony even if it had been more definitive. *See Appeal of Barrington Educ. Ass'n*, 121 N.H. 949, 953-54, 437 A.2d 718, 721 (1981); *see also Bouthiette v. Wiggin*, 122 N.H. 774, 776, 451 A.2d 368, 369 (1982). The location of the boundary line was a question of fact for the trier of fact to decide. *Mastin v. Prescott*, 122 N.H. 353, 355, 444 A.2d 556, 557 (1982). Based on all the evidence before us, we cannot say as a matter of law that the master erred in holding that the plaintiffs failed to sustain their burden of proof.

Affirmed.

All concurred.

[REDACTED]

Rockingham
No. 82-038

P. F. AVERY CORPORATION

v.

NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS & a.

November 5, 1982

[REDACTED]

[REDACTED]

Burns, Bryant, Hinchey, Cox & Shea, of Dover (*Robert P. Shea* and *Stephen E. Gaige* on the brief, and *Mr. Gaige* orally), for P. F. Avery Corporation.

Gregory H. Smith, attorney general (*James E. Townsend*, assistant attorney general, on the brief and orally), for the New Hampshire Commission for Human Rights.

Shaines, Madrigan & McEachern P.A., of Portsmouth (*Charles Cross* on the brief and orally), for Reggie Brown.

MEMORANDUM OPINION

This appeal raises an issue under RSA 354-A:4 as to the number of commissioners which satisfies the requirement of a quorum for decisions rendered by the New Hampshire Commission for Human Rights (commission). We hold that a quorum of the commission consists of three commissioners.

A hearing was held on November 21, 1980, upon a complaint brought by Reggie Brown charging racial discrimination by the P. F. Avery Corporation. Three commissioners sat and heard the evidence. Before the decision was rendered, one of the three commissioners resigned. The remaining two commissioners rendered a decision which was favorable to Brown and from which the Corporation appealed, arguing, *inter alia*, that a quorum had not existed. The appeal was heard before a Master (*Mayland H. Morse, Jr., Esq.*), whose decision was approved by *Nadeau, J.* The matter was remanded to the commission to be reviewed by "the entire commission based on the records . . ."

The legislature has provided that "[t]hree members of the commission shall constitute a quorum for the purpose of conducting the business thereof." RSA 354-A:4. The business of the commission includes the decision-making process as well as the hearing of complaints. Because this complaint was decided with less than the requisite number of commissioners, the decision is void. Accordingly, we reverse in part and remand the case to the trial court for an order that the complaint be heard again and decided by a quorum of not less than three commissioners.

Reversed and remanded.